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CURRENT TOPICS

Solicitors' Privilege

VISCOUNT MAUGHAM, in the Lords on 27th February, reserved the right "to have a clean fight" with the Lord Chancellor on Report stage of the Companies Bill, on the matter of an alleged invasion of the privilege of solicitors in a new clause entitled "Saving for solicitors and bankers." The clause relates to the Board of Trade's wide powers to ascertain the ownership of shares, and protects the privilege of a solicitor in respect of communications made to him in that capacity except as respects the name and address of his client and any person for whom his client acts or has acted. Viscount Maugham's exposition of the principle of the solicitor's privilege is worthy of quotation: "The privilege is not that of a solicitor. In the strict sense, it is the client who ought to be entitled, according to the general ideas of justice in this country, to be able to go to a solicitor and make a clean breast of everything with which he is concerned, whether it be a crime or only a company fraud, and yet be perfectly convinced that the solicitor, on behalf of the client, will always be entitled to say: 'I am not compelled, and I cannot properly divulge the secrets of my client'." Viscount Maugham thought it was reasonable to allow a solicitor to be asked "Who is your client?" With regard to the address, there were cases, he hoped not very frequent, where a client might expressly stipulate that a private address should not be disclosed, and in such a case the clause destroyed the privilege. That was an unlikely and remote case, and the purpose of concealment of address was more likely to be improper than proper. His lordship thought, however, that the following words, "any person for whom his client acts or has acted," constituted a clean invasion of the privilege in question. THE MARQUESS OF READING supported Viscount Maugham's view and said he regarded the words with considerable disquiet. The Lord Chancellor said he would look into the matter, but there must be a provision against the solicitor saying he acted for John Smith when it had been made plain to him that he was merely nominee for Tom Brown.

Lawyers and Official Appointments

WHAT is the peculiar advantage in being "a barrister or solicitor of not less than seven years' standing"? The cynical and superficial answer may seem to be that it is the usual qualification for an official appointment. Most lawyers and many laymen know that there are good reasons for it. They were very well expressed by Mr. W. S. MORRISON when he moved before Standing Committee D of the Commons, examining the Town and Country Planning Bill, on 18th February that the chairman of the Central Land Board should have this qualification. The functions of the Board include the partition of the sum for compensation and the betterment and development charges, and Mr. Morrison said that it was very necessary that those functions should be exercised by a body of impartiality and prestige. He said: "It is always easy to go for lawyers or any category of men . . . A lawyer is accustomed to deal with evidence. It is true that as an advocate he has often to put the best case for his clients, but in order to do that he must have a mind trained to sift evidence as evidence, and it is that professional qualification, and not any superior morality, which makes him a fit and proper person for this task." Professor GRUFFYDD protested against the view that the only people who could weigh evidence were lawyers, but Mr. WALKER-SMITH thought that "a pleasant process of alchemy" was repeated every time a lawyer was promoted to the judicial bench, whereby he shed the controversial feeling. Mr. MANNINGHAM-BULLER, Sir H. LUCAS TOOTH and Mr. H. STRAUSS all referred to the advantages of having a legal chairman when statutes of such complexity had to be interpreted. The amendment was in the event defeated, but we feel that this should not be the end of the matter. Representations should continue to be made to those at present in authority that the laws of evidence are not mere technical jargon, and that training in and experience of their application to facts as well as experience of considering every case he handles from the judicial angle, as the only means of successfully conducting it, do in fact give the lawyer something which the average layman has not got, and which peculiarly fits him for appointments of this class.

War Damage Commission

THE War Damage Commission announced, on 24th February, that during 1946 they paid 368,182 claims for the repair of damage to land and buildings, compared with 318,000 in the previous twelve months. The intake of new claims practically doubled between the beginning and the end of the year to over 10,000 per week. The figures for the various offices show that the highest number of claims was 64,035 paid in N.W. London. Next came S.W. London, with 61,084, and N.E. and S.E. London followed with 37,744 and 34,591 respectively. In the provinces Cambridge, Tunbridge Wells, Manchester, Reading and Bristol had most claims paid, the numbers being 32,565, 28,764, 21,415, 17,755 and 17,152 respectively. Including payments in respect of work done

by local authorities, the total paid out by the Commission up to the end of the year was £409,315,041. The payments for 1946 came to £95,000,000, this sum including over £10,000,000 in respect of properties other than dwelling-houses. Well over half of this latter amount went on factories, commercial buildings, hotels and shops. Approval was given during the year to prices for the rebuilding of 19,000 dwelling-houses which qualified for a cost-of-works payment. Already in 1945 some 4,000 had been dealt with, and these with a further 4,000 now under negotiation make a total of 27,000 of the final target of 37,000 of such cases. Applications for payments on account show a marked increase as rebuilding proceeds—a branch of the work which has not yet reached its climax. It is anticipated that 1947 will be the peak year in the Commission's work. The Chancellor of the Exchequer has announced his intention of releasing value payments. These affect nearly 210,000 properties and will involve a very great amount of detailed work in the performance of which the co-operation of claimants can be invaluable. Cost-of-works claims are expected still further to increase, both in number and size, with the result that there will be heavy calls on the staff for approval of specifications before work is put in hand (there were 35,447 such submissions in 1946). The destroyed cost-of-works house programme must be completed, and careful scrutiny will be required for all new notifications of war damage—still coming in at the rate of over 1,000 per week.

Value Payments

A TREASURY Order of 6th March (*post* p. 135), gives effect to recommendations made by the War Damage Commission in their report under s. 11 of the War Damage Act, 1943 (published by H.M. Stationery Office, price 2d. net) in response to the request of the Chancellor of the Exchequer to treat as a matter of urgency his statement last December that he proposed that value payments should be made this year. The War Damage Commission had decided that the amount of value payments in general, computed on the basis of a valuation made by reference to prices current on 31st March, 1939, were inadequate. The order provides that, in cases where the payment is converted from a cost of works payment to a value payment by reason of the land being compulsorily purchased or of a requirement that the damage should not be made good, the increase is 60 per cent. In cases in which partial damage is not made good and the Commission has a discretion to decide the amount of the value payment, the maximum is increased by 60 per cent. In all other cases the increase is 45 per cent.

Witnesses' Allowances

THE report of the Committee appointed in 1939 to report on witnesses' allowances in indictable cases has now been published. Three meetings had been held when the outbreak of the war in September, 1939, caused the sittings of the Committee to be suspended, and they were resumed in March, 1946. It was pointed out by several witnesses with practical experience of the working of the regulations that there is a tendency for taxing officers invariably to allow the maximum where a maximum is laid down. The Committee emphasised that the allowances they suggested are intended to be maxima and that taxing officers should not hesitate to use their discretion to pay a less amount in suitable cases. The regulation as to witnesses giving professional evidence included only practising members of the legal and medical professions. The Committee proposed that the definition of a professional witness should include "one who is a practising member of a profession, admission to which is subject to the passing of a qualifying examination." As regards the calculation of allowances to professional witnesses, the Committee recommended, *inter alia*, that a professional witness, who is necessarily detained away from his home or place of practice for less than four hours, should be eligible for an allowance of not more than 50s., and if he is detained for more than four hours an allowance of not more than £5. Salaried professional officers who do not lose income by attendance at court should be regarded for purposes of the regulations as ordinary witnesses. For the assistance of taxing masters the Committee submitted a definition of "expert witness" as one "otherwise unconnected with the case who because of his special scientific or professional knowledge, or other special qualifications, is called to give in evidence his expert opinion, either based on facts, or on the result of examination of material or data, submitted to him for the purpose." The allowance for experts should continue to be left to the discretion of the court. It had been suggested, and the Committee agreed, that the present scale of maximum allowances for ordinary witnesses, which vary between 2s. for children or paupers and vagrants, and 14s. for persons who produce certificates showing loss of wages up to that amount, is too low. They recommended a maximum allowance of 20s. for a full day's attendance, and in addition up to 5s. a day for subsistence, as sufficient to prevent undue hardship, and held that the maximum night allowance should be raised from 10s. to 20s. The report is published by H.M. Stationery Office (3d. net), and it contains in an appendix a draft of proposed new regulations. Among witnesses who gave evidence before the Committee was Mr. W. A. COLEMAN, representing The Law Society.

Administrative Tribunals

IT is a good thing that the controversy about administrative tribunals should not abate, for the issue involved is the survival of the rule of equality before the law and of all those rules of fairness which are essential to a decent life. Professor GOODHART, writing in *The Times* of 3rd March, referred to the recent judgment of HENN COLLINS, J., in the *Stevenage* case and asked whether it was possible to establish certain basic rules of procedure which will be applicable to all administrative hearings and appeals. He suggested that a committee be appointed to consider the working of administrative tribunals and to supplement the findings of the Donoughmore Committee on Ministers' Powers of 1932. He referred to the U.S. Administrative Procedure Act, 1946, which expressly gives the right to every party to present his case fully and to be represented by counsel "or other duly qualified representative." Mr. DOUGLAS T. GARRETT, President of The Law Society, warmly supported Professor Goodhart's plea in a letter to *The Times* of 8th March. He wrote: "The Council of The Law Society have consistently striven to secure the right of legal representation for those appearing before administrative tribunals. . . . However friendly a tribunal's attitude, it must nearly always be difficult for it to elicit the relevant facts and arguments from a party appearing 'in person.' The tribunal itself is the first to recognise that the lawyer's presence leads to precision and assists towards a right conclusion . . . Before some tribunals a party is allowed to appear by 'a friend' so long as he is not a qualified lawyer—that is to say, by anyone except the man who is trained in the law and subject to rigorous professional discipline. It is sometimes said that if every one cannot afford to employ a lawyer or a trained advocate to appear for him before such tribunals, then no one should be allowed to do so. This argument is the negation of progress and democracy, and the true remedy is to make it easier for all who need a lawyer's services to obtain them." All who believe that the profession of advocacy is an essential part of the social fabric will applaud this view.

Another Opinion

ANOTHER point of view has been recently expressed by the ATTORNEY-GENERAL in an address delivered to French judges and lawyers and printed in full in the January issue of the *Modern Law Review*. After saying that common law principles and precedents are applied to statute law so that the fundamental rules of liberty and freedom remain, he continued: "Nowadays all but the legal purists accept something in the nature of administrative law, removed from the more cumbrous, expensive and dilatory processes of the ordinary courts of law, as an inevitable concomitant of the

necessarily increasing intervention of Parliament in the social and economic life of the country. . . . Parliament is obviously of the view, as also are most distinguished lawyers, that many disputes arising from the intervention of the State into the industrial, the social and the planning fields are entirely unsuited to decision by the ordinary forms of law, partly because of the great number of cases to be decided, and partly because of the technical knowledge required to decide them . . . administrative law, as we understand it, has worked well in England, and ample safeguards exist against its abuse. In any event, it covers but a small field. It is, and it will remain, a paramount rule of English law that all are equal before the law. If offences are committed, superior or official orders afford no excuse. For breaches of the law all are triable by the same processes and in the same courts. And if particular disputes are triable only by administrative tribunals, it is because they concern special rights which particular citizens enjoy because of the operation of some Act of Parliament which the Legislature has decided can best be administered by those who possess other qualifications than the merely legal ones. There is no threat to the rule of law here." This is, we submit, overstating the case in favour of administrative tribunals. Necessary though they no doubt are, the deprivation of the ordinary citizen of his right to have his case presented as efficiently as only a duly trained and qualified advocate can present it constitutes a threat to the rule of law, and it is a blunder to undermine that right in any way.

Recent Decisions

In a number of appeals under the Workmen's Compensation Acts, the Court of Appeal (SCOTT, MORTON and SOMERVELL, L.JJ.) held on 25th February (*The Times*, 26th February), that in considering the quantum of compensation on the basis of total or partial incapacity under s. 9 of the Workmen's Compensation Act, 1925, the principle of *Jones* v. *Amalgamated Collieries, Ltd.* (1943), 60 T.L.R. 97, must be limited to cases where some cause unconnected with the accident, or the economic conditions of the labour market, reduced the workman's earnings. In assessing the amount which a workman was able to earn after the accident, consideration of the existing economic position of the labour market must be excluded.

In *Associated Provincial Picture Houses, Ltd.* v. *Wednesbury Corporation*, on 28th February (*The Times*, 1st March), HENN COLLINS, J., held that where the defendant corporation imposed a condition, on the granting of a licence for the Sunday opening of cinemas, that no child under fifteen years of age should be admitted, whether accompanied by an adult or not, the defendant corporation had not acted *ultra vires* in imposing the condition.

In *Att.-Gen.* v. *Northwood Electric Light and Power Company, Ltd.*, on 4th March (*The Times*, 5th March), the Court of Appeal (the MASTER OF THE ROLLS, and MORTON and SOMERVELL, L.JJ.) held that an entry in a prepayment meter card made by a collector for the Northwood Electric Light and Power Company, Ltd., was not a receipt within the meaning of s. 103 (1) of the Stamp Act, 1891, and that it was therefore not required to be stamped with a 2d. stamp when the amount receipted was £2 or upwards. The object of the document was held to be merely administrative for the purpose of checking the current consumed and the amount of money in the meter, and the document could not be a receipt as it remained the property of the electricity company.

In *Wright* v. *Sharp*, on 7th March (*The Times*, 8th March), CASSELS, J., held that where a taxicab driver had been acquitted on charges of stealing and receiving a safe, to the charge of stealing which three other men had pleaded guilty, and it was admitted that he had driven his cab to the place from which the safe was stolen and had driven it away after it was stolen, but was unaware that any theft was being committed, there was no absence of reasonable and probable cause so as to support an action by the taxicab driver against a police constable for malicious prosecution and false imprisonment, and the action accordingly failed.

SOME NOTES ON THE CROWN PROCEEDINGS BILL—II

PART II of the Bill is the part which proposes the most extensive procedural reform. It seems at first sight to deal ruthlessly with the second of the two maxims mentioned previously in these notes, namely, that the King cannot be sued in his own courts by ordinary process. For (still bent, apparently, on assimilating the position of the Crown with that of a subject so far as this matter is concerned) cl. 11 declares that all civil proceedings by or against the Crown in the High Court shall be instituted and proceeded with in accordance with rules of court and not otherwise. The like relief may be given as in actions between subjects, except that, in order no doubt to avoid any suggestion of the Crown being in contempt of the court's orders, the declaratory order now usual in the case of petitions of right takes the place of an injunction or a decree of specific performance.

But at this point the Bill's several definitions of the phrase "civil proceedings" should be borne in mind. In Pt. II, whether used of proceedings by or against the Crown, its meaning is more restricted than in Pts. III and IV (compare cll. 21 and 34), while in the Bill generally it does not include proceedings on the Crown side of the King's Bench Division (cl. 34 (2)). Nor is the procedure of relator actions or certain charity and educational matters or Land Registry and Public Trustee proceedings affected by the main reforms (cl. 21 (3)).

Moreover, it is plain that the rules of court referred to will not be quite the same for the Crown as for ordinary litigants, for cl. 31, after empowering the making of new rules for the purpose of the Act, goes on to specify certain matters which must be covered by those rules. For instance, a plaintiff is not to take a Government department unawares by so dastardly a proceeding as entering judgment by default without leave obtained on notice (cl. 31 (2) (*c*)), or obtaining judgment summarily (cl. 31 (2) (*d*)). On the other hand, it will generally be agreed that it is reasonable to provide that there shall be no set-off or counter-claim of which the subject-matter does not concern the suing department, and at least there is to be reciprocity in this (cl. 31 (2) (*g*) (ii), (iii) and (iv)).

A step towards one of the main procedural reforms of the present Bill was taken as long ago as 1933, when the Administration of Justice (Miscellaneous Provisions) Act, by s. 4, provided that, subject to rules of court (which do not appear to have been made), any debt due to the Crown might be recovered by proceedings commenced by writ of summons, but without prejudice to the continued use of the older methods. Now many of the principal types of special process available to the Crown are to go. They are not entirely the harsh arbitrary proceedings they are sometimes imagined to be, as was pointed out by the late Sir Sydney Rowlatt in his foreword to the first edition of "Lynn's Revenue Practice and Law." But few professional tears are likely to be shed at their passing. The proceedings by the Crown which are to be discarded are set out in para. 1 of Sched. I, and include Latin and English informations and the writs of capias and subpœna ad respondendum.

Shortly after s. 4 of the Debtors Act, 1869, had abolished in ordinary cases the system of attachment, until then normally the first step in the enforcement of an order for the payment of money, it was held in *Re Smith* (1876), 2 Ex. D. 47, that this section did not apply to Crown debts. Now the Crown, by cl. 24 (2), is to relinquish this advantage, except in the case of default in payment of death duties or purchase tax. A procedure by summary application to the High Court for procuring information, accounts and payment in death duty, stamp duty, excise and purchase tax matters is introduced by cl. 12.

The petition of right is also to be abolished. The combined effect of cl. 11, cl. 21 (2) (*a*) and para. 2 of Sched. I appears to be to introduce in its place an ordinary action against the Crown for practically any cause of action unconnected with tort. No longer will His Majesty need to order specifically that right be done—in itself an indication of the hardship wrought by the strict legal rule. On the other hand, it is to be hoped that the passing of the Bill into law will not be the signal for a siege of the courts by a new band of litigants in person pressing wildly untenable claims similar to those mentioned on p. 331 of " Robertson on Crown Proceedings " (first edition). In the past the Home Office has acted as a moat over which only those with arguable cases could pass.

Another reformative step, which was begun in 1933 by enabling the Crown to sue in the county court, is to be completed by cl. 13, under which the Crown may also be sued in that court. County court rules are in future to apply whether the Crown is plaintiff or defendant.

Clause 15 is of close interest to the subject's legal advisers, for it provides the answer to the question, "Who is to sue and be sued on behalf of the Crown ? " A list is to be published by the Treasury of Government departments authorised in that behalf and of the solicitors for those departments. The subject is to sue the appropriate department if it is an authorised one, or if none of those authorised is appropriate, or the proposing plaintiff has any reasonable doubt in the matter, then the Attorney-General is to be made defendant. It may be anticipated that, as in the past with the nominal defendant system, Government departments will be found ready to furnish in cases of doubt any information necessary to allow reasonable actions to be initiated in due form.

The last of these notes, though the subject is by no means exhausted, must be on the controversial topic of discovery, which is dealt with in cl. 26 of the Bill. Hitherto the Crown has enjoyed at least a potential advantage in litigation from the fact that no order against it for discovery is possible. True that, in practice, fairness is usually restored by the Crown's submitting to voluntary discovery on mutual lines, but this is subject to the rule approved by the House of Lords in *Duncan* v. *Cammell Laird & Co., Ltd.* [1942] A.C. 624, that the court will not require production or disclosure of the *contents* of a document or the giving of information by way of oral evidence if in the opinion of a Minister of the Crown who has personally considered the matter the publication would be contrary to the public interest. This applies equally whether the Crown is or is not a party to the proceedings in which the question arises. The Bill proposes to authorise the making of an order for discovery against the Crown in proceedings to which it is a party, but without prejudice to the rule just mentioned, and subject also to rules of court securing that even the *existence* of a document shall not be disclosed if in a Minister's opinion that disclosure would be against public interest. It is to be observed that, though the court retains control of the proceedings and makes the decision to order disclosure or to allow non-disclosure, it will not go behind the Minister's opinion properly arrived at and intimated. This position has drawn adverse comment from a correspondent in *The Times* (21st February), but the views of the House of Lords that in a matter of this kind the opinion of the Minister should be conclusive are made abundantly clear by Viscount Simon, L.C., in his speech in the *Duncan* case ([1942] A.C. 624, at pp. 638-642).

COMPANY LAW AND PRACTICE

DISTRIBUTION OF PROFITS: INCOME OR CAPITAL?—II

LAST week I reviewed some of the earlier decisions on the question of whether a tenant for life on remainderman benefited from the distribution of a capital profit by a company in the shares of which they were both interested. As I pointed out, in actual fact the source of the profits was irrelevant and the only question was what did the company actually do when it made the distribution, and I indicated that there appeared to be a conflict between two cases, *Re Bates* [1928] Ch. 682, and *Re Ward* [1936] Ch. 704.

This conflict has now been resolved in favour of *Re Bates* by the decision of the Court of Appeal in *Re Doughty* [1947] 1 All E.R. 207.

In that case the company had an article which provided that the company might from time to time divide among the members by way of capital distribution in proportion to their rights and interests in the distributable profits of the company any surplus capital moneys or capital profits in the hands of the company, whether arising from the realisation of capital assets, or received in respect of any capital assets, etc.

In pursuance of that article the company did resolve that there should be declared out of realised capital profits an additional dividend. In the letter informing the members of this resolution it was stated to be a distribution out of capital profits and no income tax was deducted. It will be seen that the payment was made in pursuance of an article which provided for payment " by way of capital distribution," and Roxburgh, J., following *Re Ward*, held that in the hands of the trustees it should be regarded as capital rather than income.

The Court of Appeal reversed this decision, and in his judgment Cohen, L.J., referred to Lord Russell's judgment in the Privy Council in *Hill* v. *Permanent Trustee Co. of New South Wales* [1930] A.C. 720, where he approved *Re Bates* and laid down certain general principles. The first three of those principles are as follows :—

" (1) A limited company when it parts with moneys available for distribution among its shareholders is not concerned with the fate of those moneys in the hands of any shareholder . . .

" (2) A limited company not in liquidation can make no payment by way of return of capital to its shareholders except as a step in an authorised reduction of capital. Any other payment made by it by means of which it parts with moneys to its shareholders must and can only be made by way of dividing profits . . .

" (3) Moneys so paid to a shareholder will (if he be a trustee) *prima facie* belong to the person beneficially entitled to the income of the trust estate . . . No statement by the company or its officers that moneys being paid away to shareholders out of profits are capital . . . can have any effect on the rights of the beneficiaries under a trust instrument which comprises shares in the company."

In the fourth and fifth of the principles referred to above Lord Russell was dealing with transactions such as that which was in question in *Bouch* v. *Sproule* (1887), 12 App. Cas. 385, where the sums were not actually paid to the shareholders who became entitled to them, but were retained by the company, and in the place of those sums paid-up shares were allotted. In such a case, as Lord Russell pointed out, the assets of the company remained undiminished, for no cash was paid away. Those principles therefore did not really affect the decision in *Re Doughty*.

Cohen, L.J., then went on to say : " It seems to me that on its true construction the article we have to consider and the resolution passed thereunder merely authorise distribution of capital profits in such a way that they cannot attract income tax and do not purport to deal with the question of their character as between tenant for life and remainderman."

This does not mean that in every case of such a distribution by a company trustees who receive some part of it can ignore the terms of the trust, and it would be perfectly possible to draft a will in such a form that the ordinary payments of dividends by a company should go to the tenant for life and special dividends paid out of capital profits should be held as an increase of the trust property. It does, however, mean that special words will have to be found in the document constituting the trust before such a result can be achieved.

The case of *Re Doughty* also indicated that an article in the form of the one referred to above relating to the distribution of capital profits has no effect. Even without it a company would clearly be entitled to distribute a capital profit and its existence does not affect the nature of the sums distributed. It equally clearly cannot affect the income tax position either of the company or of any recipient of any part of the sums.

In the judgments in the Court of Appeal, Cohen, L.J., thought that a distinction could be drawn between the relevant article in that case and the one in *Re Ward*, as did Morton, L.J., but neither lord justice thought the decision in the earlier case was justified, while Somervell, L.J., found difficulty in reconciling it with the principles which have been laid down, though he agreed that apart from the earlier decisions a strong argument could have been put forward for the view that when you find the word "income" in a will it would not, *prima facie*, extend to sums which were not income under income tax law.

In all the cases so far dealt with the question was whether payments were to enure for the benefit of tenants for life or remaindermen, and as I have already pointed out, the origin of the funds distributed was immaterial. From the income tax point of view, however, this is of the first importance, for a dividend which is paid out of the capital receipts of a company does not fall to be included in the recipient's total income.

Even, however, supposing the distribution in question is made by a company out of a fund of accumulated profits, if under the scheme of distribution that amount of cash does not go direct to the shareholders but is applied by the company in paying up shares which have been allotted to the shareholders, the value of those shares does not form part of the recipient's total income for tax purposes.

This was held to be the case in *I.R.* v. *Blott* [1921] 2 A.C. 171, where it was held that the reasoning applied in *Bouch* v. *Sproule* applied equally for the purpose of determining liability for taxation and that where a company did what had been done in that case it "capitalised" for all purposes the moneys which it resolved first to distribute among its members and then to apply in paying up new shares. In *Blott's* case there was no option given by the second resolution to the shareholders to take cash instead of the paid-up shares, but even if there had been the result from the tax point of view would apparently have been the same. In *Bouch* v. *Sproule* Lord Herschell had pointed out that the option there given was not one of which anybody was likely to avail himself, and in *I.R.* v. *Wright* [1927] 1 K.B. 333, it was held by the Court of Appeal that a formal option to take the cash instead of allowing the cash to be used in paying up shares did not make the distribution part of the recipients' total income.

As we have seen, the reason for the view that these so-called "capitalised" sums are not income is that the money is retained by the company as part of its capital and is never really paid away to the shareholders, and a great deal of the discussion in *Bouch* v. *Sproule* turned on the question of whether the company had power so to increase its capital. It should follow from this that if the cash was applied in paying up debentures, which do not form part of the capital of the company, it might well be regarded as not having been capitalised, but the opposite view was taken by the House of Lords in *I.R.* v. *Fisher's Executors* [1926] A.C. 395, where it was held that a resolution to apply the cash resolved to be distributed in paying up debentures had exactly the same effect from the tax point of view as one for paying up shares.

The cases which relate to the question of income tax on this point, it will be seen, all arise where an issue of bonus shares takes place and are therefore not of immediate practical interest. They do, however, indicate the various kinds of activity which have been held to result in a capitalisation of money by a company, and the principles on which they have been decided are the same in outline as those on which the tenant for life and remainderman cases fall to be decided.

It may in the light of *Re Doughty* prove desirable, in some cases where a testator wishes shares in certain companies to be retained by his executors, for the will to provide expressly that payments in cash out of capital profits, if so described by the company, shall not go to the tenant for life.

A CONVEYANCER'S DIARY

THE LAW OF PROPERTY ACT—SECTION 40 (1)

A SOLICITOR practising in the country once told me that the point of law which he meets most often of all is whether there is a sufficient memorandum, within the meaning of s. 40 (1) of the Law of Property Act, of a contract for the sale and purchase of land. I can well believe that he is right. The question is not only of great frequency but of some considerable difficulty, and I think it may be well to set down here some of the points which it is worth having in mind in considering it. I must emphasise at the beginning that I am not attempting to deal exhaustively with s. 40 (1), which is a subject far wider than can be compressed within the space of one diary.

Section 40 (1) is as follows:—

> "No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised."

The first question which one should ask oneself is whether there has been any consensus at all. One should address oneself to this question upon a consideration of all the evidence admissible according to the ordinary rules of evidence, both oral and written. In some cases it is perfectly clear that the parties were never *ad idem*. In others it is clear that they were *ad idem*, but that they agreed that their understanding should not be legally binding; in this class fall the numerous cases where the parties have agreed "subject to contract," and where therefore there is no contract at all; see *Chillingworth* v. *Esche* [1924] 1 Ch. 97. In yet other cases the parties are truly *ad idem* and intend their consensus to amount to an enforceable agreement. Among cases of the last-mentioned class, there are some where the correspondence or documents in themselves constitute not merely a record of the agreement, but are the very agreement itself. In such cases there is of course no further difficulty as to the validity or efficacy of the contract. Our main concern here is with the two further groups within the class. In some the consensus is purely oral; in others it is a mixture of parole and writing. Where the consensus is purely oral, the contract, if it be for the disposition of land, is not enforceable, having regard to s. 40 (1), unless some memorandum or note thereof be put in writing and signed by the party to be charged or by some other person thereunto by him lawfully authorised. Where the contract is a mixture of writing and parole, it is not enforceable unless it is possible to spell out of the written parts of it a sufficient memorandum or note signed by the party to be charged or some other person thereunto by him lawfully authorised.

A sufficient memorandum or note must contain a definition of the parties, the property and the price. There is a considerable mass of authority as to how these matters can be sufficiently identified. I do not propose to discuss this line of cases here, as it is fully set forth in the standard textbooks. Suffice it to say that the courts have never liked s. 40 (1), or its predecessor, s. 4 of the Statute of Frauds, and have on the whole taken a rather lenient view as to questions of identification. One should not therefore despair at the presence of loose phrases, and should look with some particularity and care at the reported cases on this part of the subject. One must also have constantly in mind the maximum *certum est quod certum reddi potest*, of which the courts have frequently

made use in this connection. There are also certain strictly limited rules as to the admissibility of parole evidence to connect together written documents so as to enable a series of such documents to be treated as constituting together a sufficient memorandum. All I need say about this part of the subject is that, unless the parts of the memorandum are pretty obviously connected by their reference to one another, the admission of parole evidence is not at all easy.

The memorandum is to be signed by the party to be charged or his agent thereunto lawfully authorised. On this point certain serious difficulties occur. It is said that it is no part of the general authority of a solicitor to bind his client by a contract. This proposition is broadly correct, but I have more than once seen it used as if it were that it is no part of the authority of a solicitor to execute a binding memorandum of a contract, which is quite a different thing. If the contract is not merely recorded but actually made by the correspondence, it will be necessary to show that a solicitor who signs letters on behalf of his principal was acting within his authority, for the letters themselves are the contract. But if the parties have made an antecedent oral agreement, the only question is whether there is a sufficient memorandum or note of that agreement, and one is therefore looking at the correspondence not to find the agreement, but to find a record of the agreement. In this class of case, where all one is seeking to do is to show that a particular letter or series of letters amount to a sufficient memorandum within s. 40 (1), the onus is sufficiently discharged by showing that in signing those letters as letters, the solicitor had authority to do so. This proposition follows directly from *Daniels* v. *Trefusis* [1914] 1 Ch. 788. It illustrates one of the most serious traps into which a solicitor can fall. Thus, I have seen a case where in the presence of the solicitor for the vendor, the vendor and purchaser came to an oral agreement for the sale and purchase of the house at a given price. The purchaser then handed to the vendor's solicitor a cheque for the deposit and the solicitor made out a receipt for £*x* being the deposit in respect of the sale of Blackacre by Doe to Roe for £*y*. This receipt was given in the very presence of his client, and therefore, patently with the authority of his client. Although that authority was an authority merely to give a receipt the consequence of giving that receipt was that the receipt itself constituted sufficient memorandum within s. 40 (1) to enable the purchaser successfully to sue the vendor for specific performance. This is a particularly clear example, but I have seen the point very often in more or less obscure forms, and I do not think that it is appreciated anything like as widely as it ought to be. Indeed, within the last month I have seen a case in which the solicitor for one side said that he would take a lot of persuading that correspondence between solicitors could constitute a contract for the sale of land, when all the time the real point was whether it constituted a sufficient memorandum of an antecedent oral contract. I do not quite know how the misunderstanding has arisen, but in my own experience several solicitors have found to their cost that they were in error in supposing that their clients could get out of an oral contract of which there was a sufficient record in correspondence signed by the solicitor. My present purpose is, therefore, to suggest that, in any case where there is reason to think that an oral contract for the sale of land may have been made by one's lay client, one should be particularly careful in corresponding about that contract on his behalf not to put one's signature to any letter whose inadvertent consequence may be to provide a memorandum upon which one's client may be charged.

LANDLORD AND TENANT NOTEBOOK

LIABILITY TO PAINT UNDER GENERAL COVENANT

DURING the nineteenth century, the question arose from time to time whether a tenant who had entered into covenants to repair which did not in terms oblige him to do any painting could be held liable for not doing or not having done any. It arose in differing circumstances under variously worded covenants, and the result, as one might expect, is that no general answer can be given. If no such case has arisen in the present century, this is probably due to conveyancers taking note of the position and tending more and more to draft special covenants providing for painting at specified intervals.

The first of the nineteenth century cases, *Monk* v. *Noyes* (1824), 1 C. & P. 265, is very sketchily reported. The covenant, it is stated, was one "substantially to repair, uphold, and maintain"; the covenantee complained that inside painting, namely, of doors, shutters, etc., had not been kept up; the tenant denied that the covenant covered such matters; it was held that it did, and the plaintiff was awarded £150 damages. The decision has figured in the text books ever since as authority for the propositions that a covenant to repair *may* oblige the covenantor to paint, and that under a covenant substantially to repair, uphold and maintain responsibility is greater than under a covenant for good and tenantable repair (of the second proposition, more later). But, in the light of later decisions on liability to repair generally, it might have been useful to know what type of house and what length of term came under review. It is not even clear whether the £150 was awarded for failure to paint only, and it occurs to one that in 1824 a vast amount of painting could have been done for that price, more than the "et cetera" would account for in the case of an ordinary house.

The next decision also favours covenantees. In *Hopkinson* v. *Viand* (1847), 10 L.T. (o.s.) 108, the covenants ran "to paint all the outside wood and iron work once in three years, and to do all things necessary for upholding and maintaining the premises in good and substantial repair." At the trial, the jury asked whether this obliged the tenant to do inside painting. The learned judge told them that they might take such into account under the heading of general repairs. When a rule was applied for, it was pointed out that there was no ground for assuming that the amount awarded in fact included anything for inside painting; but the direction was characterised by Denman, C.J., as accurate if lacking particularity.

Then came *Johnson* v. *Gooch* (1848), 11 L.T. (o.s.) 315, indicating the limits of the principle. The report commences with some obvious misprints, but it is clear that the defendant tenant had had a lease determinable at the end of seven years at his own option, which he had exercised. References to paint in the covenant were again limited to outside work, but the general covenant demanded not so high a standard as that in the last case: "to paint the outside every fourth year, and to keep the premises in necessary repairs and amendments, and deliver them up in all things well and sufficiently repaired." A schedule of dilapidations assessed damages at £52, of which £6 related to outside painting, and £30 to all inside work, stating that the inside was so stained and blemished as to require painting anew. Parke, B., held that the covenants might render it necessary to repaint the inside of walls so stained and blemished that they could not be put into fair and proper repair short of general painting. But "if there were only a few stains and spots and blemishes on the walls in ordinary wear and tear and which a skilful artist might well repair and repaint in detail and set to rights, then the defendant was not bound to paint generally"; if the contrary were the case, however, he would not be excused by reason of the lease not containing an express covenant.

Equity provided us with *obiter dictum* authority in *Darlington* v. *Hamilton* (1854), 24 L.T. (o.s.) 33, when a claim for breach of agreement for assignment of a lease was resisted by the purchaser on the grounds that it turned out to be an under-lease and one with covenants which did not correspond to those in the head lease. Wood, V.-C., decided in favour of

the defendant apart from the second point, but considered that some weight might be attached to it. For the head lease obliged the mesne lessor to paint the outside woodwork, ironwork, and stucco every fourth, and the inside every eighth, year; in the underlease he had covenanted to paint all outside wood and iron work every fourth year, while the underlessee covenanted to repair generally. It followed, the learned Vice-Chancellor observed, that the underlessee, if the premises were not painted in the fourth year but yet satisfied the general covenant, which was possible, might find his interest forfeited at the instance of the head lessor.

Crawford v. *Newton* (1886), 2 T.L.R. 877 (C.A.), again emphasises the limit of the obligation when the general covenant is not out of the ordinary. The term had been for five years, the lessee covenanting merely to keep the inside of the buildings in tenantable repair, and so deliver them up. No painting had been done. Some of the woodwork had been worn away and decayed, and at first instance, Cave, J., allowed for replacing some of this and for an extra coat of paint to be applied to it. The plaintiffs appealed, contending that the house should have been delivered up so painted that a new tenant could take it. Lord Esher, M.R., then drew a useful distinction between repair and decoration. The covenant referred only to repair, not to ornamentation, and "decorative painting, which was not wanted for the preservation of the building, could not come within the terms of this provision or covenant." As the emphasis is on the noun "repair" rather than on the adjective "tenantable," it may well be that this decision is not reconcilable with *Monk* v. *Noyes, supra*. On the other hand, the meaning of "repair" adopted in *Bishop* v. *Consolidated London Properties Co., Ltd.* (1933), 102 L.J.K.B. 257—"to make fit again to perform its functions; to put in order"—would, in conjunction with the judgment in *Proudfoot* v. *Hart, infra*, provide material for the argument that Lord Esher's statement would not always preclude a covenantee from insisting on painting other than what was needed for the purpose of arresting decay.

For while in *Crawford* v. *Newton, supra*, Lord Esher had found that it was unnecessary, for the purposes of that case, to determine the exact meaning of the provisions as to "tenantable repair" (though, as the learned Master of the Rolls also remarked, it would be very desirable to do so), the meaning of this expression was the main issue in *Proudfoot* v. *Hart* (1890), 25 Q.B.D. 42 (C.A.). The result was a definition evolved by Lopes, L.J., and adopted by Lord Esher himself: "such repair as, having regard to the age, character and locality of the house, would make it reasonably fit for the occupation of a reasonably-minded tenant of the class who would be likely to take it." In applying this to the question of painting, the court this time had occasion to correct the views expressed by Cave, J., in the court below, the learned judge having considered that under the covenant painting could never be called for unless necessary in order to preserve fabric ("so long as no damage is done . . . the mere fact that from lapse of time paint has worn out does not . . . call upon the tenant to replace it by fresh paint"). Lopes, L.J., put it in this way: "If the paint through the lapse of time has worn off . . . so that its condition has become such as not to satisfy a reasonably-minded tenant of the class who would be likely to take the house." Lord Esher's corresponding statement showed some modification of the wide proposition laid down in *Crawford* v. *Newton*.

Two other points which are of interest were made in the judgments in *Proudfoot* v. *Hart*; one, that the tenant, if bound to repaint, is not obliged to apply similar paint; the other, that "habitable repair," "good repair," and "tenantable repair" do not differ.

If one is to attempt to summarise the result, it is useful to start with the observation that painting may be divided into two kinds by reference to nature and object: (1) decorative, and (2) preservative, and, by reference to extent, again into two kinds: (1) repainting, and (2) touching up. Covenants are, of course, less easily classified; there is no limit to their variety, and comparatively few have figured in the reported cases. It seems that a distinction *may* be or has been drawn by reference to standard, there being, or having been, two main classes. I will assume, however, that what has been said about "habitable," "good," and "tenantable" would also be said about "proper," "sufficient" and "necessary"; also, with slightly less assurance—that no distinction will now be made between "substantial" and other repair, for the judgment of Romilly, M.R., in *Brown* v. *Trumper* (1858), 26 Beav. 11, is good authority for the view that a covenant well and substantially to repair imposes no higher obligation than a covenant to deliver up in tenantable repair, and the judgment of Atkin, L.J., in *Anstruther-Gough-Calthorpe* v. *McOscar* [1924] 1 K.B. 716 (C.A.), strongly supports this view. And I will also assume that nothing is likely to turn on a possible distinction between "repair" and "condition."

This being so, the conclusion suggested is that a general repairing covenant possibly obliges the covenantor to repaint all paintwork if the standard is that of substantial repair and maintenance, certainly if either the letting value of the premises will be adversely affected or the fabric suffer deterioration by not repainting; but, where the standard is that of tenantable repair and partial or local painting will make the property reasonably lettable, touching up will satisfy the obligation.

To round the matter off; since the present century commenced, two events have happened which may interest those concerned with these cases. One is the Landlord and Tenant Act, 1927; a tenant may derive benefit from s. 18 (1), dealing with damages. The other is the issue of building restrictions which make most painting out of the question; here the tenant does not benefit (*Eyre* v. *Johnson* (1946), 62 T.L.R. 400; 90 SOL. J. 303).

TO-DAY AND YESTERDAY

March 10.—On 10th March, 1682, Captain Christopher Vratz, Lieutenant John Stern and George Borosky were hanged in Pall Mall near the place where they had murdered Mr. Thomas Thynne, at the instigation of Count Coningsmark. An account in a contemporary letter states: "I saw the execution yesterday of the German captain, etc. The captain died very boldly and unconcerned, neither did he, as I could hear, before or then own that the Count was privy to the murder. The other two showed to be very penitent and, 'tis thought, could discover nothing of the Count's practices."

March 11.—James Sampson, when young, showed such marked artistic talent that his friends helped him to develop it and brought him to the notice of the Duke of Richmond, who took him into his service on very liberal terms and employed masters to train him. He afterwards recommended him to General Conway, who appointed him one of the draughtsmen to the Tower of London. His duties left him ample leisure to frequent the British Museum, where he met many learned and distinguished men, and the General gave him the run of his library, where large sums and important documents were kept. He married one of the General's upper servants, but became involved with other women whose demands led to money difficulties. One night he stole a considerable amount in bank notes from the General's desk, setting fire to the library to cover his traces, but the fire-engines came in time and, the desk having been saved, the notes were missed. Four were found at Sampson's Pimlico lodgings and he was proved to have changed another. He was hanged at Tyburn on 11th March, 1768.

March 12.—Joan Flower worked as a charwoman at Belvoir Castle, where she was befriended by the Earl and Countess of Rutland, who employed her daughter Margaret in the poultry yard and the wash-house. They fell into disgrace, however, the mother for being a monstrous malicious woman, full of oaths and imprecations and apparently an atheist, and the daughter for carrying away unreasonable quantities of provisions and returning to the castle at unseasonable hours and also for various indecencies in her life and neglect of her work. Accordingly, the countess sent Margaret home to her mother, but gave her 40s., a bolster and a woollen mattress. After this, first the earl's eldest son, Henry, fell mysteriously ill and died. Then his son Francis

met the same fate. Finally his daughter Catherine fell sick and was in danger of death. Joan and her daughters, Margaret and Phillis, were arrested on a charge of witchcraft and convicted. The mother protested her innocence, but died suddenly in great agony while being taken to Lincoln Gaol. Margaret, however, confessed that she had procured gloves belonging to the earl's sons and a handkerchief belonging to his daughter and given them to her mother who, dipping them in hot water and rubbing them on her cat Rutterkin, her familiar, had worked a charm to injure them. Margaret and Phillis were executed at Lincoln on 12th March, 1618.

March 13.—On 13th March, 1614, Bartholemew Legat was burnt in Smithfield as an Arian heretic.

March 14.—In 1793 Joseph Gerrald was one of the delegates to the "British Convention of Delegates of the People" at Edinburgh. They generally adopted the language and organisation of the French revolutionists, whose proceedings were arousing considerable alarm in England. Several of the leaders were tried for sedition and transported. Gerrald's trial at Edinburgh ended on 14th March, 1794. He was condemned to fourteen years' transportation, but he died five months after landing at Sydney.

March 15.—Mr. Justice Chapple died on 15th March, 1745, at the age of sixty-eight, after nearly eight years as a judge of the King's Bench.

March 16.—On 16th March, 1812, two British seamen, William Cundell and John Smith, were hanged at Horsemonger Lane for high treason in entering the service of the French during the Napoleonic wars. Cundell's defence was that he had been confined by the enemy in a loathsome dungeon and had pretended to join their forces only as a preliminary to escaping, but it was proved that he wore the French uniform and did duty as a French soldier, treating with contempt British officers who were prisoners. Smith had helped to make cannonade slides. Ten other convicted seamen were reprieved.

A Divorce Court Reminiscence

The death of Sir Ellis Hume-Williams, K.C., in his eighty-fourth year, has removed one of the veteran figures of the Divorce Division. He had many stories to tell of the human comedies he had encountered in the course of his practice as a leader there. One was of a man who, instigated by his wife, decided to give her evidence to divorce him. Two friends, "not stodgy lawyers but men of the world" told him that all he had to do was to take a lady—any lady—to an hotel, spend the night in two rooms as far removed as possible but be careful to pay both bills himself in the morning. Afterwards all that remained was to write a formal letter to his wife telling her that she would find conclusive evidence of his adultery in the fact that he had paid the two bills and asking her to divorce him as soon as possible. Only after he had followed this advice did he think of going to a solicitor, who told him that his plan was simply silly and that a cat wouldn't be divorced because he and another cat had spent the night on neighbouring roofs, but added the suggestion that if his wife was so anxious to get a divorce she probably had a reason and it would be worth watching her. This was done and she was soon found to be living in almost open adultery with another man. This put the husband in the position of being able to present a petition but here he came up against the difficulty that to deceive the court and in collusion with his wife he had himself put on record a confession of his own adultery; the fact that it was completely untrue made matters rather worse. Sir Ellis Hume-Williams represented him and made fun of his amateur attempts at deception. The judge was kindly and had a sense of humour and granted a decree.

Prison Celebrations

A report from Brisbane brought news recently of a peculiar party held in a Queensland gaol when a man, who had recently been released, collected drinks and food and broke into the women's section for a rollicking celebration. Warders caught him and he was condemned to nine months' imprisonment for vagrancy and theft, while two prison officials were suspended. In the more human, if less humane, prisons of the eighteenth century, parties and entertainments were almost a matter of course, if one had the means, but some modern prisons have not been without their relaxations of discipline. About ten years ago the escape of a gaoled financier from one of the Paris prisons revealed a practice by which one of the warders kept a special parlour cell furnished with a couch, six chairs and a washstand to let to prisoners who wanted a quiet interview with their wives. About the same time there were other startling revelations from some of the United States gaols, particularly one where a ruling caste of gangsters had wireless, pet dogs, drugs, special foods, valets to wait on them, cells privately wired for telephone conversations outside the prison and special facilities for spending at least one night a week in New York. The normal position was so far reversed that the warders did not dare to administer the mildest reproof to their charges.

COUNTY COURT LETTER

Assault after Dog Bite

In *Buckle* v. *Chamberlain*, at Birmingham County Court, the claim was for £10 as damages for assault. The counter-claim was for £6 18s. as damages for assault. The plaintiff's case was that he had twice been bitten by the defendant's dog, which then bit a man named Bartlam. Having ascertained from the plaintiff the name and address of the defendant, Bartlam obtained from the magistrates an order for the destruction of the dog. Subsequently the defendant waited for the plaintiff, outside his place of employment, and struck him in the mouth, damaging his denture and cutting his lip. The defendant's case was that he acted in self-defence, having been first struck in the stomach by the plaintiff. His Honour Judge Dale gave judgment for the plaintiff on the claim and counter-claim, with costs.

Warranty of Car

In *Clift* v. *Brown*, at Shrewsbury County Court, the claim was for £100 as damages for breach of warranty. The plaintiff's case was that he let the defendant have an Austin 10 car, at an agreed value of £250, in exchange for a Standard Avon 16 and £50 in cash. The value of the Standard was agreed at £200, on the understanding that it was a 1935 model. On receiving the registration book, the plaintiff discovered that the entry "1935" had been altered from "1933." The latter model had gone out of production, and spare parts were unobtainable. The case for the defendant was that the Standard was sold by auction in November for £192 10s., and was bought by the defendant at a later auction for £158. His profit on the sale to the plaintiff was £9 10s. The defendant spent £7 10s. on repairs to the Austin, which he sold for £235, from which £5 was deducted for commission. The defendant knew the Standard was a 1933 model, and the log book was altered before the sale in November. The age of the car was not mentioned to the plaintiff, but it was not the age, so much as its condition, which was important. His Honour Judge Samuel, K.C., observed that no one was wilfully lying. The log book was wrong, but the difference in value was not £100. Judgment was given for the plaintiff for £25 and costs.

Decision under the Workmen's Compensation Acts
No Contract of Service

In *Eades* v. *Andrews*, at Bromsgrove County Court, the applicant claimed an award of £300 for herself and £61 10s. for her seven-year-old son, by reason of the death of her late husband after an accident arising out of and in the course of his employment by the respondent. The deceased had been riding in the respondent's lorry on the 8th December, 1945, the driver being a man named Webb. While the lorry was rounding a corner the deceased overbalanced and fell out on to his head. He died in hospital two days later. The applicant's case was that, although her husband was a roadman, employed by the urban district council, he had also worked for some months for the respondent on Saturday afternoons. His work had consisted in helping to saw up and deliver firewood, for which he was paid 5s. or 6s. a day. The respondent's case was that he owned a plot of land, which he allowed the deceased to cultivate rent free. He had never employed the deceased in the haulage business, and any help given by the deceased to the lorry driver was voluntary. The respondent had never paid the deceased any wages, and had not stamped his insurance card. Corroborative evidence was given by the lorry driver. His Honour Judge Langman held that there was no evidence that the respondent could exercise any control over the deceased. No contract existed between the two men, and no award could be made. The application was dismissed, with costs.

Share of House

In *Willey* v. *Wilson*, at Boston County Court, the claim was for possession of a house. The plaintiff's case was that he bought the house in 1936. After living in it himself, he let the house to the defendant in 1940. At the end of 1945 it was mutually

agreed that the plaintiff should occupy two rooms—a dining room and a bedroom—and also a box-room, for his seven-year-old boy. The defendant was left with one room down and one upstairs. The kitchen and bathroom were shared. The house was partly furnished by each party and the defendant's rent was halved. Notice to quit was served, but the defendant claimed the protection of the Rent Acts. His Honour Judge Shove observed that, where two families shared a house, each having rooms of their own, and shared amenities, the tenant was not protected. The defendant's position was one of the penalties of being kind. Judgment was given for the plaintiff, with costs. See *Neale* v. *Del Soto* (1945), 89 SOL. J. 130.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber and a stamped addressed envelope.

Settlement—POSITION ON CESSER—TRUSTEES OF SETTLEMENT

Q. X died after 1925 leaving by his will, *inter alia*, a leasehold property in London registered at the Land Registry to his trustees, W and B, upon trust to pay out of the rent and income thereof an annuity of £60 per year to his niece K, and the balance of the said rent and income, subject to the said annuity, upon trust for life for his sister E, and after her death, subject to the annuity, to W absolutely. W has recently died. E, the present life tenant, is registered at the Land Registry as proprietor of the property, and there is the usual restriction providing for payment of capital moneys to W and B on any sale. B, who is now the sole surviving trustee of X, is a very old lady and so also is E, the life tenant and registered proprietor. Is the proper course for B to appoint the two executors of W to be co-trustees with her of the will of X deceased ?

A. On the death of E the property will vest in her (general) personal representatives (*Re Bridgett & Hayes' Contract* [1928] Ch. 163; 71 SOL. J. 910), and they can in due course vest the property in W's executors, and indeed, can be obliged to do so. From the point of view of W's executors we do not think that the proposed action is, therefore, of much value.

Sole surviving executor—TRUSTEE WHO DID NOT PROVE—POWER TO APPOINT NEW TRUSTEES—POSITION

Q. X, who was seised in fee simple of certain freehold property, died in 1919, having by his will appointed A, B, C and D executors and trustees of his will, and devised all his real estate unto his trustees, upon trust for sale with power at their discretion to postpone such sale. His will was proved in 1919 by A and D, power being reserved to B and C to prove the same. C died in 1921 without having proved the will. D died in 1933, and A died in 1939. In 1940 B (who has never proved the will) appointed E and F to be trustees of the will of X to act jointly with B for all the purposes thereof. B, E and F as the trustees of the will of X have recently contracted with my client W for the sale to him of the freehold property :—

(1) Has B power to appoint new trustees of the will of X, in view of the fact that he has never proved the will ?

(2) No express vesting assent was made by the executors of X vesting the property in the trustees of the will of X. Could it be presumed that there would be an implied assent in favour of the trustees before 1925 ? Alternatively, would the legal estate vest in the trustees of the will of X (including the trustees who had not proved the will) under the transitional provisions of the Law of Property Act, 1925, Sched. I, Pt. II, para. 6 (*b*) ?

A. (1) Yes, unless he in fact disclaimed by conduct (which is possible : see *Re Birchall* (1889), 40 Ch. D. 436). A statutory declaration should be obtained to show that he has consistently acted in the trusts.

(2) We think assent can properly be assumed pre-1926 by conduct, but suggest that the statutory declaration mentioned above might also cover this point. We do not think the transitional provisions of the Law of Property Act, 1925, can be looked to for help because there is (in effect) no trust for sale until the devise upon trust for sale is assented to.

Amended rules of the High Court of Eire have increased the remuneration of a solicitor, other than disbursements, in respect of business, contentious or non-contentious, transacted in or before the High Court or the Supreme Court on or after 24th February, by the addition to the costs and fees chargeable immediately prior to that date of an amount equal to 25 per cent.

REVIEWS

A Treatise on the Law, Privileges, Proceedings and Usage of Parliament. By Sir THOMAS ERSKINE MAY, K.C.B., D.C.L. Fourteenth Edition. Edited by Sir GILBERT CAMPION, K.C.B., Clerk to the House of Commons. 1946. London : Butterworth & Co. (Publishers), Ltd. 75s. net.

We regret the delay in publishing a review of the fourteenth edition of " Erskine May," which is due entirely to our desire, successfully accomplished, to read substantially through it. It would, indeed, be an impertinence to offer any criticism of this book, in which is collected the accumulated wisdom of the Parliaments of the last five centuries. The precedent on any given subject may as easily date from the reign of Queen Elizabeth as from that of the reigning Sovereign, and the impression with which we, as laymen, are mainly left, is the continuity of English constitutional history. So much has occurred in these centuries, and has been noted down and marshalled, that it is difficult to imagine a situation arising which is not affected by precedent if not directly covered by it. We wonder whether the complexity of the proceedings on private Bills may be somewhat over-scrupulous, and so have resulted in the relative diminution in recent years of this class of business. But as regards public business, " Erskine May " is a salutary reminder of the difficulties which would confront a dictatorial government in working its will beyond a certain limit. We hope that there may be many more editions of this book and that the checks and balances which Parliament has imposed upon its own sovereignty may not diminish.

Hanson's Death Duties. Ninth Edition. By JACKSON WOLFE, LL.D., of Lincoln's Inn, Barrister-at-Law, and HENRY E. SMITH, LL.B., a Chief Examiner in the Estate Duty Office. 1946. London : Sweet and Maxwell, Ltd. 70s. net.

In preparing the ninth edition of this work, the editors have retained the original arrangement of the book. It is divided into two parts, the first giving a summary of the law of estate duty, legacy duty and succession duty ; the second dealing with the Acts relating to the death duties, section by section. The notes to the sections deal with the subject matter in the fullest manner possible, and no aspect of the law and practice appears to have been omitted. In the preface, the editors state that they have preserved the form of the text and commentary for the reason that it is unique amongst the text books on the death duties. Much can be said for its preservation, especially from the point of view of the ease with which the case law and the practice of the Estate Duty Office can be checked with the wording of the statute. But whether one likes the arrangement is a matter of personal opinion, usually determined by whether one is familiar with it.

The parts of the book dealing with legacy and succession duties have undergone little alteration since the issue of the last edition. This is because there have been few important changes in the law governing these subjects. But the part dealing with estate duty has been extensively re-written as a natural consequence of the extensions of the incidence of estate duty. In the fifteen years that have elapsed since the issue of the eighth edition, there have not only been a succession of important Finance Acts, but a very considerable number of important decisions. The incorporation of these has much enlarged the book, despite the omission of the many historical references which were a feature of the previous editions. The editors deserve special congratulation for their exhaustive and lucid explanations. In particular, estate duty as it applies to shares in private controlled companies should now be less of a nightmare than it has been in the past.

The inevitable delays associated with the printing and publication of books to-day, have unfortunately made the simultaneous publication of a supplement necessary. This cannot be helped, but it has the advantage of making the edition fully comprehensive and up to date. Further supplements are promised as and when the occasion calls for them. This provision is a most necessary one, and makes the purchase of the book a long term investment.

A word must be said of the full index and numerous cross-references. The arrangement of the book calls for a standard in these matters near to perfection, and it is found. The ultimate result is, therefore, that it can truly be said that the ninth edition again places the book in the first rank of text books on the death duties.

Food and Drugs Administration. By STEWART SWIFT, M.B.E. (Butterworth's Sanitary Officers' Library, No. 2.) 1947. London : Butterworth & Co. (Publishers), Ltd. 40s. net.

The author, who is chief sanitary inspector for the City of

Oxford, states in his preface that this work is intended primarily for his colleagues in the local government service and for students, and is not intended as a substitute for the standard legal text-books. Thus, for a number of decisions on selling to the prejudice of a purchaser and on warranties, footnotes refer the reader to Bell's "Sale of Food and Drugs," published by the same publishers. This is not to say, however, that legal points are not dealt with adequately for the purpose in view.

Extracts are given from the relevant regulations and statutory rules and orders, although some readers might prefer that these, and, indeed, the Acts themselves, should be set out *in extenso* with notes rather than broken up and interspersed with the text. Details of various tests with which inspectors should be familiar are given. The law relating to diseases of animals, pharmacy and poisons, fertilisers and feeding stuffs, and the grading and marking of agricultural produce, is included. One would have expected a reference to the Pharmacy and Medicines Act, 1941, ss. 8, 9 and 11, particularly the latter (which relates to the disclosure of the composition of medicines), and a full treatment of the Sale of Food (Weights and Measures) Act, 1926. The inclusion of these would add to the value of the work.

This book should prove very useful to anyone concerned with these subjects.

BOOKS RECEIVED

The Law Relating to Building and Engineering Contracts. By W. T. CRESWELL, K.C., and NORMAN P. GREIG, B.A., of the Inner Temple, Barrister-at-Law. With a foreword by the late ALEXANDER MACMORRAN, M.A., K.C. Fourth Edition. 1946. pp. xx and (with Index) 452. London: Sir Isaac Pitman & Sons, Ltd. 25s. net.

The Conveyancer and Property Lawyer. Volume 10 (New Series). Edited by DONALD C. L. CREE, M.A., of Lincoln's Inn, Barrister-at-Law, and HAROLD POTTER, LL.D., of Gray's Inn, Barrister-at-Law. 1946. pp. viii and (with Index) 336. London: Sweet & Maxwell, Ltd. 32s. 6d. net.

The Law Relating to Private Street Works. By W. CARLYLE CROASDELL, of Gray's Inn, Barrister-at-Law. Second Edition. 1947. pp. xxix, 247 and (Index) 21. London: Hamish Hamilton (Law Books), Ltd. 25s. net.

How to Take Minutes. Fifth Edition. Edited by E. MARTIN, F.C.I.S. 1947. pp. (with Index) 134. London: Sir Isaac Pitman & Sons, Ltd. 3s. net.

A Guide to Juvenile Court Law. By GILBERT H. F. MUMFORD, Solicitor, Clerk to the Justices, Gravesend Borough. With a foreword by T. A. HAMILTON BAYNES, M.A., J.P., Chairman of the Birmingham Juvenile Court Panel. Second Edition. 1947. pp. (with Index) 150. London: Jordan & Sons, Ltd. 5s. net.

A Short Sketch of English Local Government Administration. By B. SEN, of Gray's Inn, Barrister-at-Law. 1947. pp. x and 57. London: Stevens & Sons, Ltd. 3s. net.

John Citizen and the Law. By RONALD RUBINSTEIN. 1947. pp. xx and (with Index) 365. Pelican Books. 2s. net.

The Death Duties. First Supplement to the Tenth Edition, by ROBERT DYMOND and R. K. JOHNS. 1947. pp. 34. London: The Solicitors' Law Stationery Society, Ltd.

Burke's Loose-Leaf War Legislation. Edited by HAROLD PARRISH, Barrister-at-Law. 1945–46 Volume, Pt. 19. Hamish Hamilton (Law Books), Ltd.

Current Law—Index to the Law of 1946. By JOHN BURKE, Barrister-at-Law. 1947. pp. 60. London: Sweet and Maxwell, Ltd.; Stevens & Sons, Ltd. 6s. net.

Current Law, January, 1947. Edited by CLAUD G. ALLEN, B.A. (Oxon.), Barrister-at-Law. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.

Who's Who in Parliament. Compiled by CAROL BUNKER. pp. 176. London: St. Botolph Publishing Co., Ltd. Paper Edition, 6s. net. Cloth Edition, 7s. 6d. net.

Standard Catalogue of the Coins of Great Britain and Ireland. Compiled by HERBERT ALLEN SEABY, F.R.N.S. 1947 Edition. pp. 78. London: B. A. Seaby, Ltd. 5s. net.

The Furnished Houses (Rent Control) Act, 1946. A Six Months' Retrospect. By L. G. H. HORTON-SMITH, Barrister-at-Law. 1947. pp. 47. London: Justice of the Peace, Ltd. 4s. net.

Mr. DANIEL PATTERSON BLADES, K.C., has been appointed one of the Senators of His Majesty's College of Justice in Scotland, in succession to Lord Moncrieff.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

The Rule in Russell *v.* Russell

Sir,—The Denning Committee has recommended the abolition of the rule in *Russell* v. *Russell*. In para. 69 they say: "We recommend that it should be altered so far as matrimonial causes are concerned so as to enable a party to give evidence tending to show that he or she did not have marital intercourse, notwithstanding that such evidence would tend to bastardise a child *prima facie* born in wedlock."

This recommendation will be widely approved. It is important, however, that the abolition of the rule should not be confined to matrimonial causes only, but should extend to bastardy proceedings. In cases where a married woman is applying for a bastardy order the rule makes it always difficult, often expensive and sometimes impossible for her to convict the alleged father of paternity. One hundred and seventy years have elapsed since the judgment of Lord Mansfield, upon which this rule is said to be based. During that period times and ideas have changed. The strongest argument for the abolition of the rule is surely in one of the two dissenting opinions in *Russell* v. *Russell* ([1924] A.C., at p. 748): "In the administration of justice nothing is of higher importance than that all relevant evidence should be admitted and should be heard by the tribunal that is charged with deciding according to the truth. To ordain that a court should decide upon the relevant facts and at the same time that it should not hear some of those relevant facts from the person who best knows and can prove them at first hand seems to me to be a contradiction in terms."

Stratford, E.15. PETER STAINSBY.

Retirement of Company Directors

Sir,—In the article on the Companies Bill in your issue of the 4th January, 1947, it is stated, with reference to the provisions as to the age limit imposed on directors by cl. 22, that it is not proposed that these provisions are to apply to persons who are, when cl. 22 becomes law, directors of a company and who are under the articles of that company liable to retire at a certain age, nor to persons who then hold office for any defined period until the earliest date on which that period can be determined.

This, no doubt, expresses the intention of cl. 23, following the recommendation of the Cohen Committee, in cl. 131 of its report, that no director holding office at the date of coming into force of the new Act should be bound to retire on the ground of age until he becomes due to retire under the articles of association. But is it quite the effect of cl. 23, which reads: "the said section shall not apply in relation to a director holding office on the coming into force thereof until the earliest date on which, by the conditions on which he then holds office, his term of office either expires or can be brought to an end by notice given after the coming into force of that section"? Take the common case of a director of a company whose articles provide that he may retire from his office upon giving a certain notice. Can it not be said that his term of office can be brought to an end by notice? The Act does not say that it must be brought to an end by the company, or by notice given by the company. If this is a possible interpretation, it will follow that in every case where the articles allow a director to retire on notice, the provisions as to compulsory retirement on reaching an age limit will apply to the directors then in office immediately the Act comes into force. This may not be intended, but I suggest that the clause is capable of this construction.

Manchester. ALLAN WALMSLEY.

Our contributor writes:—The suggested construction appears to be correct. A director, in the absence of special provisions which must be extremely rare in the case of public companies, can always resign. It is to be hoped that this point will be clarified before the Bill becomes law and that the notice referred to will clearly mean, as was no doubt intended, notice by the company.

OBITUARY

MR. C. V. BOOTH

Mr. Charles Victor Booth, solicitor, senior member of Messrs. Blake & Redden, Privy Council Agents, and Messrs. Redden and Booth, solicitors, of Victoria Street, S.W.1, died on Sunday, 23rd February, aged sixty. He was admitted in 1910, and acted as legal adviser to the Office of the Agent-General in London for British Columbia.

NOTES OF CASES

CHANCERY DIVISION

Van der Linde *v.* Van der Linde

Eversheld, J. 20th February, 1947

Mistake—Rectification—Voluntary covenant to pay £400 gross—Covenantor intends to pay £400 net—Seeks rectification in order to save tax—Whether order will be made.

Witness action.

This action and two others raising similar questions were heard together. The plaintiff had for some time been making voluntary allowances to his three sisters, who were the respective defendants to the three actions. He was told by a friend that, if he entered into deeds of covenant providing for the payment of this bounty to his sisters, he could claim a deduction in respect of the covenanted payments for certain purposes relating to his own income obligations. By a deed of covenant made the 8th October, 1942, between the plaintiff of the one part and his sister A, the defendant of the other part, the plaintiff, in consideration of his natural love and affection for his sister, covenanted to pay to her for the term of her natural life "an annual sum of £400" by equal quarterly payments. He executed this deed with the intention of providing for the defendant an annuity of £400 net, after deduction of income tax. When it was found that the deed was not effective for that purpose, the plaintiff by a deed of rectification of the 5th April, 1944, provided, by appropriate language, that the net sum of £400 was to be payable to the defendant as from 1st January, 1942. In this action he claimed rectification of the covenant by the substitution of the words "such an annual sum as shall after deduction of income tax at the standard rate for the time being amount to £400." According to the plaintiff's own evidence, he intended to execute a document which would obtain some relief for him in respect of income tax. The defendant did not give evidence. The case came on for hearing in November, 1945, when it was adjourned so that notice might be given for the Crown. At the subsequent hearing the Solicitor-General appeared on behalf of the Crown as *amicus curiae* and opposed rectification.

EVERSHED, J., said that it was plain from *Bonhote* v. *Henderson* [1895] 1 Ch. 742, that the court exercised its jurisdiction to order rectification more cautiously in the case of a voluntary settlement than in the case of other documents. The Solicitor-General had suggested that in the case of a covenant of this nature, which was nothing more than a benefaction, there was no equity to reform. To do so would involve adding to an already imperfect gift, which conflicted with the principle that the courts had no equity to complete an imperfect gift. Further, he contended that where it was shown that there never was any obstacle as between the two parties to a deed to put right any mistake, the court should not exercise its discretion to rectify, more particularly where the object was, on the plaintiff's part, to get a fiscal advantage which he could have obtained and which he had only lost through an error. He, the learned judge, was not satisfied that the proposition that there was no jurisdiction to rectify a voluntary covenant such as this, because of the absence of any equity to perfect an imperfect gift, was correct. Where the object was to obtain by a side wind some advantage to the settlor without regard to the apparent intention on the face of the deed and to the fact that the covenantee had never suffered any damage from the mistake, he was satisfied that the matter should be approached with caution. The answer to the plaintiff's claim was that he failed *in limine* to prove that he intended by this document a covenant to pay such a sum as, after deduction of income tax, would leave £400 a year to his sister. All that he had proved was that he intended to get some benefit from the income tax provisions. The action should be dismissed.

COUNSEL: *J. Pennycuick; J. F. Bowyer; The Solicitor-General* (Sir Frank Soskice, K.C.), *and J. H. Stamp.*

SOLICITORS: *Last, Riches & Co.; W. J. Woodhouse & Co.; Treasury Solicitor.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

***In re* Goldsmith; Brett *v.* Bingham**

Wynn-Parry, J. 25th February, 1947

Will—Conditional devise subject to life interest—Devisee to pay £800 to trustees within six months of testator's death to form part of residue—£800 not paid within period—Whether time of the essence.

Adjourned summons.

The testator, who died in 1922, after appointing the plaintiffs and the defendants B and H executors and trustees of his will, by cl. 3 devised and bequeathed to his trustees all his real and personal estate upon trust (*a*) to pay the net income therefrom to his wife during her life. By sub-cl. (*d*) he provided "as to my freehold house S . . . upon trust after the death of my said wife for the said B in fee simple but subject to the payment by him of the sum of £800 to my trustees within six months of my decease to form part of my residuary estate." By sub-cl. (*h*) he gave the residue of his real and personal estate to H absolutely. The testator's widow survived him and died in December, 1945. B did not pay the £800 within six months of the testator's death, but on the 5th March, 1946, he tendered a cheque for that amount to his co-trustees. The first question raised by this summons was whether the conditional devise in cl. 3 (*d*) to B had failed and the property had fallen into residue and was held in trust for H absolutely, or whether the devise was effected subject to the payment by B of £800.

WYNN-PARRY, J., said that the principle upon which the court had to proceed in considering a gift of this nature, subject to a condition which had not been performed or strictly performed, was stated by Romer, J. (as he then was), in *In re Goodwin* [1924] 2 Ch. 26, at p. 30, where he said: "It is well settled by authority that where a gift in a will is made subject to a condition, even a condition precedent, to be performed within a specified time, then, at any rate on the absence of an express gift over, it was always a question for the court to determine whether the time so specified was of the essence of the matter. . . . If the court finds that a performance of the condition at a time subsequent to the expiration of the period fixed by the testator in substance provides for the very thing the testator intended to provide for, so that all the parties can be put in substantially the same position as they would have been in had the condition been performed within the proper time, time is not regarded as of the essence, and such performance is treated as a sufficient compliance with the condition." Romer, J., in so holding, followed the earlier decision of Sargant, J., in *In re Packard* [1920] 1 Ch. 594. In the present case there was no gift over, and therefore the question was whether the time specified in cl. 3 (*d*) was of the essence of the matter. He could not disregard the fact that fulfilment of the condition would have provided a capital sum which, if invested, would have produced income to augment that payable to the widow during her life. It was clear that a performance of the condition at this date would not result in placing the parties in the same position as if the terms of the will had been strictly complied with, for within the phrase "the parties" must be included the widow, who was dead. Applying the principle laid down in *In re Packard, supra*, and *In re Goodwin, supra*, he was unable to say that time was not of the essence. He would declare that the conditional devise had failed and the property had fallen into residue.

COUNSEL: *M. Berkeley; C. D. Myles; A. J. Belsham.*

SOLICITORS: *Shelton, Cobb & Co.*, for *Coles & James*, Hailsham; *Haslewood, Hare & Co.*, for *Mayo & Perkins*, Eastbourne; *Kenneth Brown, Baker, Baker*, for *Andrews & Bennett*, Burwash.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

PRACTICE NOTE

Vaisey, J. 15th November, 1946

Practice—Exhibits—Marking.

Vaisey, J., on the hearing of an originating summons, stated that: Whenever possible the originals of relevant documents should be put in evidence. The practice of substituting copies on the plea of saving the originals from being marked as exhibits was quite wrong. Exhibit marks were useful as a permanent record that the documents had been before the court, putting those who had occasion to refer to them on inquiry as to the nature of the proceedings. Otherwise, the fact that a document had been construed by the court might easily escape notice. In the case of a will, it might sometimes be advisable for the court to direct a reference to any order determining its construction to be endorsed on the probate. (See Law of Property Act, 1925, s. 137 (4), and Withers on Reversions, 2nd ed., at p. 16.)

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

R. *v.* Leamington Spa Licensing Justices; *ex parte* Pinnington

Lord Goddard, C.J., and Humphreys and Lewis, JJ.

11th December, 1946

Licensing—Removal—Licensed district outside borough but in same county—Application to borough justices for removal of licence to premises within borough—Justices' jurisdiction—Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), ss. 2, 24 (3), 110.

Application for an order of *mandamus*.

The applicant applied to the licensing justices of Leamington Spa for the removal of the licence to sell intoxicating liquors attached to a public house at Napton outside that borough to premises within it. The borough and the licensing district in which the public house was, were, however, in the same county. The justices held that they had no jurisdiction to entertain the application because the proposed removal was from a place in a different licensing district from that of the borough. The applicant accordingly made this application for an order of *mandamus* directing the justices to hear and determine his licensing application. By s. 24 (3) of the Licensing (Consolidation) Act, 1910, "an ordinary removal of a justices' licence may be authorised to any premises within the licensing district in which the premises are situated from which it is desired to remove the licence, or to any premises within a licensing district within the same county, by the licensing justices of the district to which it is desired to remove the licence."

LORD GODDARD, C.J., said that s. 2 of the Act of 1910 showed that there were two types of licensing district to be considered: petty sessional divisions of a county and boroughs having a separate commission of the peace. The grammatical construction of s. 24 (3) was somewhat obscure unless the words "are situated" were removed to the end of their sentence. Thus read, the subsection provided for two matters: (1) a licence could be removed from premises situated in one licensing district to other premises situated in the same district; or (2) a licence could be removed from premises in one district to premises in another district, provided that the districts were in the same county. Leamington Spa being a licensing district in the same county as Napton, it followed from the plain wording of s. 24 (3) that a person could apply to the licensing justices of Leamington Spa for an order for removal of a licence from Napton, which was in another licensing district, to their own licensing district, both districts being in the same county. If that were so, then it seemed clear that the justices had jurisdiction to hear the application. Counsel showing cause had relied on s. 110, the definition section, whereby the expression "county" was to include "any riding, part or division of a county having a separate commission of the peace and a separate court of quarter sessions . . ." East and West Sussex, for example, were separate counties. A licence could not be removed from East Sussex to West Sussex, although it could be from one licensing district in East Sussex to another in East Sussex. The section went on to provide that for certain appeal purposes (there was in any event no right of appeal from a refusal to grant an ordinary removal) the area of a county should be deemed to include any borough, or any part thereof, which was locally situated in the county. In s. 29, which concerned appeals, exactly the same provision was made, in effect, for in the case of any borough situated within the county, the appeal, it was provided, lay to the county licensing justices and not to the borough court of quarter sessions. That was because it was thought better that the recorder of a borough, who had nothing to do with the county in the ordinary way, should not be the person to decide licensing matters. Those words in s. 110 might well be unnecessary or otiose, for the matter was already dealt with in s. 29 specifically in relation to appeals. They could not take away from the plain effect of s. 24 (3), whereby, in his (his lordship's) opinion, provided that the two licensing districts were situated in the same county, an order for removal could be made from one to the other of them notwithstanding that one was borough and one county. The application must be granted.

HUMPHREYS, J., gave judgment agreeing.

LEWIS, J., agreed.

COUNSEL: *Beresford*, K.C., and *Gerald Howard*; *Flowers*, K.C., and *Percy Lamb*.

SOLICITORS: *Godden, Holme & Co.*; *Gregory, Rowcliffe & Co.*, for *Wright, Hassall & Co.*, Leamington Spa.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

I.T.P. (London), Ltd., and Others *v.* Winstanley

Lord Goddard, C.J., Humphreys and Lewis, JJ.
12th December, 1946

Betting and Lotteries—Football pool—Sale of coupons by tobacconist on behalf of promoter—"in connection with any . . . business"—Betting and Lotteries Act, 1934 (24 & 25 *Geo.* 5, *c.* 58), *s.* 26 (1).

Case stated by Liverpool justices.

The appellant company, promoters of football pools competitions, agreed with the proprietors of a newsagents' and tobacconists' shop that the latter should sell to their customers, for one penny each, coupons for entering the competitions, and be allowed to retain the proceeds of those sales as well as receiving a specified commission. The promoters made that arrangement because of statutory regulations for economy in the use of paper, whereby the sale of the coupons was rendered illegal. Informations were preferred alleging that the company had contravened s. 26 (1) of the Betting and Lotteries Act, 1934, and that the shopkeeper and his wife had aided and abetted the offence. By s. 26 (1) of the Betting and Lotteries Act, 1934, "It shall be unlawful to conduct . . . in connection with any trade or business . . . (*a*) any competition in which prizes are offered for forecasts of the result of . . . a future event . . ."

LORD GODDARD, C.J., said that it was contended that the company had committed the offence of conducting their competitions in connection with a trade or business. Section 26 (1) simply contained a prohibition against that; it did not say what connection there should not be with any trade or business. In construing an Act which was altering the law, the court was entitled, in the words of Lord Lindley, M.R., in *Thomson* v. *Clanmorris* (1900) 1 Ch. 718, to have regard "not only to the words used, but to the history of the Act, and the reasons which led to its being passed," and to "the mischief which had to be cured as well as to the cure provided." The history of the Act of 1934 and the mischief which had to be cured were within the memory of all. It had been common, not only in connection with the sale of articles, for persons carrying on a trade or business to offer prizes for a competition as an encouragement to the public to do business with them. That was presumably regarded as undesirable, and prohibited. The company were said to have been conducting their competition in connection with the trade or business of the appellant shopkeeper and his wife; but the Act said not "in connection with any person who carries on a trade or business" but "in connection with any trade or business." There must, in his (his lordship's) opinion, be some nexus between the carrying on of the competition and the trade or business in some connection with which the competition was said to have been carried on. He did not think the relevant words of s. 26 (1) apt to create the alleged offence. At any rate the statute was a penal one, and if the draftsman had not made his intention clear an accused person must be given the benefit of that doubt. He (his lordship) was naturally impressed by the difference between ss. 26 and 22, the latter of which, in the same Part of the Act, concerned lotteries and prize competitions. In connection with a lottery there were the most elaborate provisions by way of prohibition, the printing or distribution of any tickets being forbidden. If there had been an offence here, it was equally an offence for the appellant company to ask a printer to print the coupons, for the printing of the tickets was, no doubt, a necessary part of conducting the competitions. It would be extravagant to say on that account that the printer, or the person conducting a competition of this sort, might be penalised if tickets or coupons were printed for it; yet that printing would be equally in connection with the business of a printer. The appeal should be allowed.

HUMPHREYS and LEWIS, JJ., agreed.

COUNSEL: *Beyfus*, K.C., and *Amphlett*; *Nield*, K.C., and *E. Steel*.

SOLICITORS: *Amphlett & Co.*; *the Town Clerk*, Liverpool.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Sneesby *v.* Luke; Follett *v.* Same

Lord Goddard, C.J., Humphreys and Oliver, JJ.
17th December, 1946

Food and drugs—Adulterated whisky—Sale by retailer in condition in which received from dealer—Statutory certificate delivered with whisky—Whether warranty protecting vendor.

Cases stated by the Metropolitan Magistrate, sitting at Great Marlborough Street.

The respondent, an inspector of food and drugs, bought at the appellants' premises whisky which was found to contain 14 per cent. excess of water. The whisky had been delivered to the vendors by authorised dealers; it was sold to the inspector from bottles which had not been opened; and it had been properly cared for in locked premises between receipt and sale. There being, therefore, no fault on the part of the vendors, they claimed to be protected by a warranty, covering their purchase of the whisky, in the form of an "excise certificate for the removal of duty paid spirits" given under the Spirits Act, 1880. By s. 105 (5) of that Act spirits may not be sent out from the stock of a "dealer" unless accompanied by a certificate. By s. 108 (1) a dealer must obtain from the proper officer a certificate book containing forms of certificates and counterfoils, and by s. 108 (2) he must, before sending out any spirits requiring to be accompanied by a certificate, enter in the certificates and counterfoils the particulars specified in Sched. IV to the Act, and deliver the

certificate with the spirits to the purchaser named in the certificate. That Schedule prescribes that the certificate shall state, among other things, "quantity, denomination, and strength of spirits sent out." Section 14 of the Finance Act, 1935, imposes penalties for the sale by a dealer or a retailer of spirits at a strength lower than that by reference to which the customs and excise duty was computed. By s. 84 (5) of the Food and Drugs Act, 1938, ". . . a name or description entered in an invoice shall be deemed to be a written warranty that the food or drug" in question "is . . . such . . . that a person can sell . . . it, under that name or description without contravening . . . the Act." The magistrate held that the certificates given under the Act of 1880 were not a warranty protecting the vendors, and cancelled them. They appealed.

LORD GODDARD, C.J., said that the result of the relevant statutory provisions was that, when the proprietor of a hotel or public house ordered spirits from his dealer, he knew that he would receive them with an excise certificate, and that one of the things which the certificate would state was the strength of the spirits. That seemed to be about as clear and conclusive a written warranty as anyone could possibly require or give. If the case had been confined to the argument that these certificates were warranties, possibly the magistrate might have reached a different decision. The point, however, seemed to have been taken that the certificates were invoices. They were clearly not invoices or intended to be such. It was not, however, only on an invoice that a vendor might rely for protection: he might rely on any warranty provided that it was written. It was argued that there were cases showing that the written warranty must form part of the contract, in other words, that a written warranty must be stipulated for. Where a vendor and a purchaser were transacting with regard to an article which could only be supplied by the one to the other provided that it was accompanied by a particular document, and where that document was a statement which in law must amount to a warranty, it was part of the contract that that warranty should be given and received. The dealers here had clearly known that they had to send these certificates with the goods, and had done so. The statements as to strength in the certificates were warranties. The fact that they were given for the purposes of the Spirits Act did not make them any the less warranties. It would be a hardship if a retailer purchasing from his dealer were not entitled to rely on the certificate. The appeals must succeed.

HUMPHREYS and LEWIS, JJ., agreed.

COUNSEL: *Slade*, K.C., and *Burge*; *Gattie*.

SOLICITORS: *J. E. Lickfold & Sons*; *Allen & Son*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Phoenix Assurance Co., Ltd. *v.* Minister of Town and Country Planning

Henn Collins, J. 20th February, 1947

Town and Country Planning—War-damaged area of town—Declaratory order for compulsory purchase of land in area—Inclusion of land neither damaged nor intended to be laid out afresh—Validity—Town and Country Planning Act, 1944 (7 & 8 *Geo.* 6, *c.* 47), *ss.* 1 (1), (7).

Appeals under the Town and Country Planning Act, 1944.

By an order dated 6th November, 1946, made under s. 1 (1) of the Act of 1944, the Minister of Town and Country Planning declared that all the property in a prescribed war-damaged area in the centre of Plymouth was subject to compulsory purchase by Plymouth Corporation as the local planning authority. Included in the area were the properties of the appellants in both appeals, which neither had suffered war damage nor were to be laid out afresh under the development scheme proposed for the area in question. These appeals were against the order on the ground that the Minister had no jurisdiction to make it so far as it related to their properties. By s. 1 (1) of the Act of 1944, the Minister is empowered to make a declaratory order that all or any of the land in a war-damaged area shall be subject to compulsory purchase by the local planning authority if he "is satisfied that it is requisite." By s. 1 (2) a notice must be published giving full details of any such development scheme. *Cur adv. vult.*

HENN COLLINS, J., said that the appellants, while admitting that their properties were adjacent to the damaged area, contended that the Minister must be satisfied of all the matters mentioned in s. 1 (1) in respect of each property to which the subsection was to apply, and that he must be so satisfied on reasonable grounds. It was argued for the Minister that his satisfaction concerning the various matters on which he had to make up his mind founded his jurisdiction to make a declaratory order; and that his satisfaction, or opinion, was a matter so peculiarly within his personal or administrative capacity that, as in *Liversidge* v. *Anderson* [1942] A.C. 206; 85 SOL. J. 439, the making of an order was a matter for his executive discretion, so that the court could not call into question the grounds on which he acted. Reliance was placed on the word "expediency" in s. 1 (7), but he (his lordship) did not think that it furthered the Minister's argument; rather the reverse. The local authority had, under that subsection, to show that they had a good case before certain preliminary steps must be taken. The provisions in s. 1 (7) made clear that the public notice to be given of the proposed scheme was definitive of it, at least so far as the local planning authority, Plymouth Corporation, were concerned; that it was only in relation to that particular lay-out that powers were sought; and that the corporation could not, by embracing in the scheme property which in fact fell outside s. 1, acquire compulsory powers over it on the ground that their plans might at a later date be so modified as to bring the property within s. 1 (1). They could not, for example, say that their proposed plan might thereafter be so altered that a new road would run not past but through the appellants' property, and so justify the expediency of their scheme in relation to the appellants' building. Whether the Minister could do so was another matter, depending on the more basic question in the appeal. Section 1 (7) certainly lent no support to the argument that the Minister's "satisfaction" was a matter for his executive discretion. The considerations present in *Liversidge* v. *Anderson*, *supra*, did not apply here, where no measure by way of preventing a public danger was involved. The words "where the Minister is satisfied that it is requisite" in s. 1 (1) meant satisfied on reasonable grounds as to the matters to which the subsection referred. It was little to the point to say that a responsible Minister would not act on insufficient grounds, for on the evidence he had clearly done so here. The appellants' properties were not damaged; they were not to be laid out afresh; and there was no evidence that they required to be. The appeals succeeded, and the order would be quashed in so far as it related to the appellants' properties.

COUNSEL: *Scott Henderson*, K.C., and *Molony*; *The Attorney-General* (Sir Hartley Shawcross, K.C.); *H. L. Parker*.

SOLICITORS: *Ravenscroft, Woodward & Co.*, for *Woollcombe and Yonge*, Plymouth (Company); *Gregory, Rowcliffe & Co.*, for *Bond, Pearce, Eliott & Knape*, Plymouth; *Treasury Solicitor*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

R. *v.* Collins

Lord Goddard, C.J., Humphreys and Lewis, JJ.

14th January, 1947

Criminal law—Sentence—Offences to be taken into consideration—Offences under Road Traffic Act, 1930, *involving disqualification or endorsement of licence not included.*

Application for leave to appeal against a conviction of receiving stolen property. The trial judge, at the prisoner's request, took into consideration a warrant taken out against him for driving a motor car while under the influence of drink.

LORD GODDARD, C.J., said that, in the opinion of the court, offences against the Road Traffic Act, 1930, which, on conviction, might involve disqualification for driving, or the endorsement of the licence, were not proper cases to be taken into account when sentencing a prisoner for another class of offence altogether; although, no doubt, if a man were charged on indictment with an offence under the Road Traffic Act, 1930, for which he was liable to be disqualified, and there were a second charge against him, the court might take that into account. Unless there were a conviction for an offence for which the prisoner was liable to be disqualified for holding a licence, such as driving under the influence of drink or driving a car when uninsured, there was no power to disqualify him, and Parliament had ordained that in those cases, unless special circumstances existed, the prisoner must be disqualified. Similarly, in certain other cases, the licence must be endorsed. In the particular case before the court, no harm might have been done because the prisoner received a sentence of three years' penal servitude. None the less, if the case had been inquired into, the court might have considered a period of disqualification for five or ten years appropriate or, if the man had been convicted two or three times before, the court might have imposed a disqualification for life. It would be most unsatisfactory if, where the case taken into consideration was one of driving under the influence of drink, a sentence of six months' hard labour were passed,

for the period of disqualification must be for a year. The court, therefore, laid down that, for the future, offences under the Road Traffic Act, 1930, for which disqualification for driving or the endorsement of the licence could be imposed, were not proper cases to be taken into account when passing sentence for dishonesty or other types of offence.

There were no appearances.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time :—

PENICILLIN BILL [H.L.] [5th March.

To control the sale and supply of penicillin and certain other substances.

POLISH RESETTLEMENT BILL [H.C.] [5th March.

SUMMER TIME BILL [H.C.] [5th March.

Read Second Time :—

CITY OF LONDON (TITHES) BILL [H.L.] [5th March.

CIVIC RESTAURANTS BILL [H.C.] [6th March.

CROWN PROCEEDINGS BILL [H.L.] [4th March.

Read Third Time :—

AGRICULTURAL WAGES REGULATION BILL [H.C.] [4th March.

APPELLATE JURISDICTION BILL [H.C.] [4th March.

BIRTHS AND DEATHS REGISTRATION BILL [H.C.] [4th March.

COUNTY COUNCILS ASSOCIATION EXPENSES (AMENDMENT) BILL [H.C.] [4th March.

In Committee :—

COMPANIES BILL [H.L.] [3rd March.

HOUSE OF COMMONS

Read First Time :—

PUBLIC OFFICES (SITE) BILL [H.C.] [3rd March.

To make provision for the acquisition of a site for public offices in Westminster, to amend the Westminster Hospital Act, 1913, and for purposes connected with the matters aforesaid.

Read Third Time :—

POLISH RESETTLEMENT BILL [H.C.] [4th March.

SUMMER TIME BILL [H.C.] [4th March.

QUESTIONS TO MINISTERS

STEVENAGE (HIGH COURT DECISION)

Mr. DEREK WALKER-SMITH asked the Minister of Town and Country Planning what action he proposes to take in regard to the proposed new town of Stevenage, in view of the quashing by the High Court of the Order made in respect of it.

Mr. SILKIN : Notice of appeal against the recent decision has been given on my behalf.

Mr. WALKER-SMITH : The House will await the result of the appeal with interest ; can the Minister give some indication of the interim effect of the quashing of the Order ? Will there be any effect on any action already taken, which may now be *ultra vires*, such as premises acquired, salaries paid, and so on ?

Mr. SILKIN : The interim effect is, of course, to hold up the procedure. [4th March.

ASSESSMENT APPEAL TRIBUNALS

Sir I. FRASER asked the Attorney-General how many Assessment Appeal Tribunals have now been set up ; and whether he is satisfied that there are sufficient tribunals at work to avoid unnecessary delay in the settling of appeals.

The ATTORNEY-GENERAL : Two tribunals to hear assessment appeals have been set up in England, one in Scotland and none as yet in Northern Ireland. I do not consider that there is any unnecessary delay in the hearing of appeals. [4th March.

NATIONALITY OF MARRIED WOMEN

LORD RUSSELL OF LIVERPOOL asked His Majesty's Government when it is proposed, in view of the very large number of applications from British soldiers in Germany to marry German wives, to introduce legislation to prevent such women from obtaining thereby British nationality.

The LORD CHANCELLOR : I am not at present in a position to say when it may be possible for the Government to introduce legislation to amend the nationality law. As was announced on 1st August, one of the changes which it is proposed to embody in amending legislation is a provision that a foreign woman on marriage to a British subject shall not automatically acquire British nationality, but shall have the right to apply for it subject to the exercise by the Secretary of State of a discretion as to the grant or refusal of the application. It is not contemplated that a foreign woman contracting a *bona fide* marriage with a British subject would be refused naturalisation solely on the ground that she possessed some particular nationality of origin. [4th March.

INVESTIGATING OFFICERS (POWERS)

Sir RALPH GLYN asked the Financial Secretary to the Treasury which are the nine Departments whose officers are at present authorised to carry out inspections and investigations into private houses and premises without a search warrant ; whether, before this is done, permission has to be obtained from a Permanent Under-Secretary or from whom is such authority obtained ; and on what sources of information is action taken.

Mr. GLENVIL HALL : The required particulars are as follow :—

Department concerned and purpose of entry	Manner of authorisation	Sources of Information leading to action
Admiralty. Inspection of contractor's books.	Specific authority of Permanent Secretary or an Under-Secretary in each case.	Examination of accounts in normal course.
Ministry of Labour & National Service. (*a*) Inquiries under Control of Engagement Order.	Individual authority issued by a senior officer not below rank of Asst. Regional Controller.	Information coming into possession of the Dept. during the course of day to day work.
(*b*) Deferments under National Service (Armed Forces) Acts.		
Ministry of Works. Inspection of land under Defence Regulation No. 85.	Power no longer exercised.	
Ministry of Health. (*a*) Inspection of Insurance Doctors' records. (*b*) Premises for manufacture of therapeutic substances.	(*a*) Regional medical officers have general power. (*b*) Medical officers empowered under Regulations.	In normal course of duty
Ministry of Food. (*a*) Food undertakings.	Warrants issued to enforcement officers by Permanent Secretary and Under-Secretary.	Variety of information from the public and from departmental investigation.
(*b*) Rodent and Insect Inspection.	Warrant issued by Permanent Secretary.	
Board of Trade. Inspection of trading activities.	Specific authority of an Asst. Secretary.	Trade associations, notification by other traders or member of the public. Examination of records and returns of other traders.
Ministry of Agriculture. Various.	General certificate of authority issued on behalf of the Minister by a Senior Officer.	Wide variety of outside sources and also as result of routine investigations (e.g., arising out of outbreaks of foot and mouth disease).
Department of Agriculture for Scotland. Various.	General authority issued on behalf of the Secretary of State.	Usually arising out of applications by persons concerned for statutory licences ; routine inspections under regulatory legislation ; requests by local sanitary authorities or police ; complaints received.
Ministry of Transport. (*a*) Inspection of vehicles	No special authority as entry is usually by invitation.	In normal course of duty. Exceptionally on complaint received by Regional Transport Commissioner.
(*b*) Removal of offending traffic signs.	Specific authority of an Asst. Secretary.	

[6th March.

DEPENDANTS IN U.K.

Mr. PETER FREEMAN asked the Secretary of State for the Home Department whether he is now in a position to state whether legal aid and maintenance will be provided for dependants of natives of other countries who are no longer domiciled here and who have evaded their personal responsibilities ; and how many illegitimate half-caste children are concerned in such negotiations.

Mr. EDE : As regards maintenance I am not in a position to add anything to the replies given on 3rd February by the Under-Secretary of State for Foreign Affairs and by the Prime Minister on 10th February, to questions in Parliament, copies of which I am sending to my hon. friend. As regards legal aid, I hope soon to be in a position to make a statement regarding the arrangements made for such aid in American cases. [6th March.

BRITISH WIVES OF FOREIGN NATIONALS

LADY GRANT asked the Secretary of State for the Home Department whether the discussions with the Dominions relative to points of detail concerning the nationality of British women married to foreigners are yet complete ; and when the proposed legislation amending the present law is to be introduced.

Mr. EDE : Yes, sir. The conference of experts has completed its examination of the various questions referred to them, and a

report on the proceedings of the conference is being prepared for submission by the delegates to the Ministers of the countries represented. I am not in a position to make any statement about the date of legislation. [6th March.

MATRIMONIAL CAUSES (NEW RULES)

Mr. W. WELLS asked the Attorney-General whether the Government accept the recommendations contained in the second interim and final Reports of the Denning Committee for procedural reforms in matrimonial causes.

The ATTORNEY-GENERAL: Save that it is proposed to retain the necessity for an affidavit in support of a petition—but with a modified procedure designed to save time and expense—the procedural recommendations made in Pt. II of the Second Interim Report of the Denning Committee are accepted in principle. But in the course of preparing the detailed Rules it has been found necessary to make a number of modifications or variations of the actual proposals made by the Committee, and I do not suggest that the Rules when made will represent exactly what was proposed in every single instance. With very few exceptions, however, the substance of these valuable recommendations will be incorporated in the new code, or be given effect to by administrative action. The new Rules which will shortly be issued will incorporate a number of the procedural reforms recommended in the Final Report of the Denning Committee. Others are still under consideration, and I cannot make any definite statement about them to-day. [6th March.

RULES AND ORDERS

S.R. & O., 1947, No. 390

WAR DAMAGE

THE WAR DAMAGE (INCREASE OF VALUE PAYMENTS) ORDER, 1947, DATED MARCH 4, 1947, MADE BY THE TREASURY UNDER SECTION 11 (1) OF THE WAR DAMAGE ACT, 1943 (6 & 7 GEO. 6, c. 21).

The Treasury, in exercise of the power conferred upon them by sub-section (1) of Section 11 of the War Damage Act, 1943, hereby make the following Order :—

1.—(1) This Order may be cited as the War Damage (Increase of Value Payments) Order, 1947.

(2) The Interpretation Act, 1889,* applies to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

2. In this Order

(*a*) " the Act " means the War Damage Act, 1943 ;

(*b*) " the Commission " means the War Damage Commission.

3. In any case in which a value payment is payable under the following provisions of the Act, that is to say—

(*a*) sub-section (1) of Section 7 (which makes general provision as to the cases in which payments of cost of works and value payments respectively are to be made) ;

(*b*) paragraph (*b*) of Section 15 (which provides for the payments to be made where making good total loss is expedient for the benefit of other land) ; and

(*c*) paragraph (*b*) of sub-section (3) of Section 20 (which provides for the payments to be made for the purpose of giving effect to the provisions for securing conformity with planning requirements, etc.)

the amount thereof shall be increased by a sum equal to forty-five per cent. of the amount computed as provided by the Act.

4. In any case in which a value payment is payable under the following provisions of the Act, that is to say :—

(*a*) Section 14 (which provides for the payments to be made when partially damaged land is compulsorily acquired) ;

(*b*) paragraph (*b*) of sub-section (2) of the said Section 20

the amount thereof shall be increased by a sum equal to sixty per cent. of the amount computed as provided by the Act.

5. In any case in which a value payment is payable under the provisions of Section 13 of the Act (which provides for the payments to be made where partial damage to land is not made good) the amount mentioned in paragraph (*b*) of sub-section (1) as the maximum amount which the Commission may pay in respect of the damage so far as not made good shall be increased by a sum equal to sixty per cent. thereof.

Dated the fourth day of March, 1947.

R. J. Taylor,
J. W. Snow,
Two of the Lords Commissioners of His Majesty's Treasury.

* 52 & 53 Vict. c. 63.

PRIVATE IMPORTATION FROM GERMANY

A Board of Trade announcement, dated 25th February, states that, as from 4th March, 1947, certain Trading with the Enemy restrictions will be relaxed so as to permit a limited degree of private trade with Germany. Attention is drawn to the following orders: Trading with the Enemy (Authorisation) (Germany) Order, 1947 (S.R. & O., 1947, No. 300); Trading with the Enemy (Transfer of Negotiable Instruments, etc.) (Germany) Order, 1947 (S.R. & O., 1947, No. 301); Trading with the Enemy (Custodian) (Amendment) (Germany) Order, 1947 (S.R. & O., 1947, No. 302).

The general effect of these orders is to permit trade in goods, and transactions incidental thereto, with governmental or semi-governmental authorities and private traders or firms in Germany and to remove Board of Trade and Custodian Control from any money or property arising out of this trade. German money and property in the United Kingdom at the date of the order and income arising therefrom continue under such control.

These orders operate in respect of the whole of Germany. The rest of the notice refers to procedure for private trade with the joint United States/United Kingdom zones only. Separate announcements will be made on the procedure for trade with the French and Russian zones.

Contracts will be signed with the German supplier, but must be approved by the Export/Import Agency. The contract will include the following points: (i) The price will be quoted in currency other than German marks. In the case of sales to the United Kingdom the currency will be sterling. (ii) The contract will not be effective until it has been approved by the Export/Import Agency. (iii) German exports to the United Kingdom will be sold either f.o.b. or f.o.r. at frontier. In appropriate cases an arbitration clause may be inserted. It is not possible at present for a German to sue or be sued outside Germany.

Imports from Germany into the United Kingdom will be paid for in sterling.

No action will be necessary in the case of transactions conducted through the British purchasing agency, but in the case of direct contracts between British buyers and German sellers, all goods, other than those which are covered by open general licence, will need an import licence issued by import licensing department.

Import licences will only be given for essential goods such as machinery and equipment, chemicals, certain types of textiles, etc. Permission will also be given for processing transactions, whether payment is made in cash or by offset, such as a balance of the raw material being left behind.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 314. **Double Taxation Relief** (Estate Duty) (South Africa Order in Council. February 13.

No. 315. Double Taxation Relief (Taxes on Income) (South Africa) Order. February 13.

No. 343. **Regulation of Payments** (General) Order. February 26.

No. 300. **Trading with the Enemy** (Authorisation) (Germany) Order. February 24.

No. 302. Trading with the Enemy (Custodian) (Amendment) (Germany) Order. February 24.

No. 301. Trading with the Enemy (Transfer of Negotiable Instruments, etc.) (Germany) Order. February 24.

No. 390. **War Damage** (Increase of Value Payments) Order. March 4.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has ordered that His Honour Judge WHITMEE shall cease to sit as additional Judge at the Windsor County Court, and His Honour Judge PRATT shall sit as additional Judge at that court, with effect from 6th March, 1947.

The Lord Chancellor has appointed Mr. ARTHUR STANESBY BROUGHTON to be the Registrar of Bolton, Bury and Rochdale County Courts, and District Registrar in the District Registries of the High Court of Justice in Bolton, Bury and Rochdale, as from the 1st March, 1947, *vice* Mr. N. M. Higham (deceased).

The Lord Chancellor has appointed Mr. EDWIN ARTHUR EVERETT to be Assistant Registrar of County Courts in the London area as from 1st March, 1947.

Notes

A general meeting of members of the Royal Institution of Chartered Surveyors qualified as quantity surveyors will be held in the lecture hall of the Institution, on Wednesday, 19th March, 1947, at 5.30 p.m., when Mr. E. J. Rimmer, B.Sc., Barrister-at-Law, will read a paper on " The Legal Obligations of a Quantity Surveyor."

The usual monthly meeting of the Directors of the Law Association was held on the 3rd March, 1947, with Mr. S. Hewitt

Pitt in the chair. The other directors present were Messrs. T. L. Dinwiddy, Douglas T. Garrett, Ernest Goddard, G. D. Hugh Jones, Frank S. Pritchard, John Venning, William Winterbotham, and the Secretary, Mr. Andrew H. Morton. The sum of £92 was voted in relief of deserving applicants; other general business was transacted and new members were elected.

LAW STUDENTS' DEBATING SOCIETY

At a meeting of the Law Students' Debating Society, held at The Law Society's Court Room, on Tuesday, 28th January, 1947 (Chairman, Mr. J. M. Shaw), the motion "That the case of *Hollington* v. *F. Hewthorn & Co., Ltd., and Another* [1943] K.B. 27, was wrongly decided" was lost by one vote, there being seventeen members and three visitors present.

On Tuesday, 4th February, 1947 (Chairman, Mr. G. A. Russo), the motion "That the appointment of a Royal Commission to inquire into the Press is a waste of public funds" was carried by eight votes, there being eighteen members and seven visitors present.

On Tuesday, 11th February, 1947 (Chairman, Miss Ruth Eldridge), the motion "That the case of *R.* v. *Sims* [1946] K.B. 531, was wrongly decided" was carried by two votes, there being ten members and one visitor present.

On Tuesday, 4th March, 1947 (Chairman, Mr. J. M. Shaw), the motion "That England is still the best country in which to live" was carried by three votes, there being eleven members and three visitors present.

On Monday, 17th March, 1947, at 7.30 p.m., a joint debate will be held with the Sylvan Debating Club, at the Caxton Hall, Westminster, when the subject will be "That a halt should be called to scientific research."

On Tuesday, 25th March, 1947, at The Law Society's Court Room, the subject will be "That the law relating to damage by animals calls for drastic reform."

Wills and Bequests

Mr. W. Davis, solicitor, of Rugby, left £11,617, with net personalty £10,289. He left £100 to his clerk, Mr. R. Bateman.

Mr. H. Harvey, retired solicitor, of Orpington, Kent, left £3,210, with net personalty £1,655.

Mr. G. R. Hill, barrister-at-law, of Thornton-le-Dale, Pickering, Yorkshire, left £31,414, with net personalty £27,049.

Mr. A. E. A. Langhorne, solicitor, of Edgbaston, left £1,071, with net personalty £874.

Mr. A. M. Lawrence, solicitor, of Ossett, Yorkshire, left £20,271, with net personalty £13,040.

Mr. W. W. T. Prosser, solicitor, of Carmarthen, left £60,219.

Mr. C. F. Richmond, solicitor, of Gainsborough, Lincolnshire, left £37,570, with net personalty £37,041.

Mr. C. J. Sharp, solicitor, of Southampton, left £7,577, with net personalty £3,850.

Mr. T. Somerville, solicitor, of Torquay, left £38,364, with net personalty £19,500.

Mr. J. P. Whittingham, solicitor, of Nantwich, left £71,191, with net personalty £69,476.

COURT PAPERS

SUPREME COURT OF JUDICATURE

HILARY SITTINGS, 1947

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota	Appeal Court I	Mr. Justice Vaisey
Mon., Mar. 17	Mr. Hay	Mr. Jones	Mr. Reader
Tues., ,, 18	Farr	Reader	Hay
Wed., ,, 19	Blaker	Hay	Farr
Thurs., ,, 20	Andrews	Farr	Blaker
Fri., ,, 21	Jones	Blaker	Andrews
Sat., ,, 22	Reader	Andrews	Jones

	Group A		Group B	
Date.	Mr. Justice Roxburgh *Non-Witness.*	Mr. Justice Wynn-Parry *Witness.*	Mr. Justice Evershed *Witness.*	Mr. Justice Romer *Non-Witness*
Mon., Mar. 17	Mr. Andrews	Mr. Blaker	Mr. Hay	Mr. Farr
Tues., ,, 18	Jones	Andrews	Farr	Blaker
Wed., ,, 19	Reader	Jones	Blaker	Andrews
Thurs., ,, 20	Hay	Reader	Andrews	Jones
Fri., ,, 21	Farr	Hay	Jones	Reader
Sat., ,, 22	Blaker	Farr	Reader	Hay

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price Mar. 10 1947	Flat Interest Yield	‡ Approximate Yield with redemption
			£ s. d.	£ s. d.
British Government Securities				
Consols 4% 1957 or after	FA	114⅛	3 9 10	2 5 5
Consols 2½%	JAJO	95⅛xd	2 12 4	—
War Loan 3% 1955–59	AO	106½xd	2 16 4	2 1 9
War Loan 3½% 1952 or after	JD	107	3 5 5	2 2 3
Funding 4% Loan 1960–90	MN	119⅛	3 6 11	2 5 0
Funding 3% Loan 1959–69	AO	106½xd	2 16 4	2 7 4
Funding 2¾% Loan 1952–57	JD	104⅛	2 12 8	1 15 9
Funding 2½% Loan 1956–61	AO	102½xd	2 8 9	2 3 5
Victory 4% Loan Av. life 18 years	MS	120	3 6 8	2 11 10
Conversion 3½% Loan 1961 or after	AO	111½xd	3 2 9	2 10 4
National Defence Loan 3% 1954–58	JJ	106⅛	2 16 4	1 18 1
National War Bonds 2½% 1952–54	MS	103	2 8 7	1 18 9
Savings Bonds 3% 1955–65	FA	106⅛	2 16 4	2 2 1
Savings Bonds 3% 1960–70	MS	106⅛	2 16 4	2 8 2
Treasury 2½%	AO	96½	2 11 11	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	101	2 19 5	—
Guaranteed 2½% Stock (Irish Land Act, 1903)	JJ	101	2 14 5	—
Redemption 3% 1986–96	AO	112xd	2 13 7	2 10 4
Sudan 4½% 1939–73 Av. life 16 years	FA	125	3 12 0	2 11 6
Sudan 4% 1974 Red. in part after 1950	MN	117⅛	3 8 1	—
Tanganyika 4% Guaranteed 1951–71	FA	106⅛	3 15 1	2 5 3
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	101⅛	2 9 3	2 0 0
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	112⅛	3 11 1	2 7 1
Australia (Commonw'h) 3½% 1964–74	JJ	111½	2 18 3	2 7 11
*Australia (Commonw'h) 3% 1955–58	AO	106	2 16 7	2 4 2
†Nigeria 4% 1963	AO	123⅛	3 4 9	2 6 2
*Queensland 3½% 1950–70	JJ	104	3 7 4	2 2 6
Southern Rhodesia 3½% 1961–66	JJ	114⅛	3 1 2	2 5 7
Trinidad 3% 1965–70	AO	109½xd	2 14 10	2 7 6
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	100½	2 19 8	—
*Leeds 3¼% 1958–62	JJ	109	2 19 8	2 6 1
*Liverpool 3% 1954–64	MN	106	2 16 7	2 1 1
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	127xd	2 15 1	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	101⅛	2 19 1	—
*London County 3½% 1954–59	FA	109	3 4 3	2 3 9
*Manchester 3% 1941 or after	FA	101	2 19 5	—
*Manchester 3% 1958–63	AO	108	2 15 7	2 4 5
Met. Water Board "A" 1963–2003	AO	107⅛xd	2 15 10	2 8 6
* Do. do. 3% "B" 1934–2003	MS	101	2 19 5	—
* Do. do. 3% "E" 1953–73	JJ	105	2 17 2	2 2 1
Middlesex C.C. 3% 1961–66	MS	107⅛	2 15 10	2 7 4
*Newcastle 3% Consolidated 1957	MS	106	2 16 7	2 6 5
Nottingham 3% Irredeemable	MN	111	2 14 1	—
Sheffield Corporation 3½% 1968	JJ	116½	3 0 1	2 9 8
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	124⅛	3 4 3	—
Gt. Western Rly. 4½% Debenture	JJ	125⅛	3 11 9	—
Gt. Western Rly. 5% Debenture	JJ	137⅛	3 12 9	—
Gt. Western Rly. 5% Rent Charge	FA	135⅛	3 13 10	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	131½xd	3 16 1	—
Gt. Western Rly. 5% Preference	MA	120½xd	4 3 0	—

* Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated the earliest date; in the case of other Stocks, as at the latest date.

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